



DECISION ON ADMISSIBILITY

Case no. CH/03/14021

Rasim DEDIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 June 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement (“the Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(2)(c) and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The application was introduced on 18 April 2003, and registered on the same day. The applicant complains that his labour relations were terminated by a decision of his employer because of serious infringement of his labour obligations. He also complains that the domestic courts rejected his request for reinstatement into his position.
2. The applicant finally requested the Chamber to order the respondent Party, as a provisional measure, to reinstate him into his position until the end of the proceedings before the Chamber.
3. On 5 May 2003, the Chamber decided to reject the provisional measure requested.

II. FACTS

4. The applicant has been employed in the Coal Mine “Banovići” D.o.o. (hereinafter: the “Coal Mine”) for more than 25 years. On 28 December 2001, the Director of the Coal Mine issued a decision on termination of his labour contract. The decision stated that the applicant had committed a serious infringement of his responsibilities, *i.e.* he came to work under the influence of alcohol and drank alcohol or used other narcotics during his labour hours, as well as instigated and participated in disorder and fighting at the employer’s company. The applicant submitted an objection against this decision to the Management Board of the Coal Mine but, on 1 February 2002, the Management Board issued a decision rejecting the applicant’s objection as ill-founded.
5. The applicant initiated a court proceeding against the legality of this decision before the Municipal Court in Banovići. He requested that the decision be quashed and he be reinstated into his position. On 16 July 2002, the Municipal Court in Banovići issued a decision accepting his complaint and ordering the Coal Mine to reinstate him into his labour relations. The Municipal Court considered that the reasons for the termination were not established in an appropriate manner. His employer did not use an “alcohol-test” to establish whether the applicant was under the influence of alcohol, but only relied on the assessment of a foreman. Also, the Municipal Court considered that there had been no fighting but only “skirmishing and chest grubbing”. The employer submitted an appeal against this decision.
6. On 13 January 2003, the Cantonal Court in Tuzla issued a decision accepting the appeal of the employer, modifying the first instance judgment and rejecting the claims of the applicant. The Cantonal Court considered that the Municipal Court had wrongly assessed the evidence. The decision further considered that the reasoning of the Municipal Court was in opposition to the documents submitted during the proceedings and the testimony of witnesses heard during the first instance proceedings.

III. OPINION OF THE CHAMBER

7. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted.... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”
8. Regarding the applicant’s claim that his right to work was violated, the Chamber notes that the Convention does not contain a right to that effect. As the Chamber has explained in previous cases on this issue, it only has jurisdiction to consider the right to work, which is protected, *inter alia*, by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right (see for example case no. CH/97/67, *Zahirović*, decision on the admissibility and merits delivered on 8 July 1999, paragraph 115, Decisions July-December 1999). The facts of this case do not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the

Agreement. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible.

9. As to the applicant's claim that he has been denied the rights guaranteed by Article 6 of the Convention, the Chamber notes that the applicant complains that the courts wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the courts failed to act fairly as required by Article 6 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible as well.

IV. CONCLUSION

10. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel