



## **DECISION ON THE ADMISSIBILITY**

**DELIVERED IN WRITING ON 22 JULY 1998**

in

**Asif KOVAČ**

**CASE No. CH/97/113**

against

**The Federation of Bosnia and Herzegovina**

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 16 July 1998 in a panel composed of the following Members:

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

Peter KEMPEES, Registrar  
Olga KAPIĆ, Deputy Registrar

**Having considered** the application by Asif KOVAČ against The Federation of Bosnia and Herzegovina submitted on 12 December 1997 under Article VIII paragraph 1 of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered on 22 December 1997 under Case No. CH/97/113;

**Adopted the following Decision** on the admissibility of the Application in accordance with Article VIII paragraph 2 of the Agreement.

## **I. THE FACTS**

1. The facts of the case, as they appear from the application and the documents submitted by the applicant, are as follows:

2. The applicant was born in 1947 in Rakovica in the municipality of Ilidža and is of Bosniak descent. In 1972 he graduated from the Military Academy of the land forces in Belgrade after which he served as an officer of the Yugoslav National Army (JNA). In 1992 he left the JNA and in January 1993 he went illegally to Germany.

3. In April 1993 the applicant contacted the consulate of the Republic of Bosnia and Herzegovina in Bonn and requested to be allowed to return to the Republic of BiH to serve in the Army of the Republic ("ARBiH"). Since the consulate did not take any action, the applicant went to Tuzla on his own initiative on 1 September 1994 and joined the ARBiH. After serving in the 7<sup>th</sup> Corps until 17 January 1996, the applicant occupied the position of officer commanding the department for housing issues in the Headquarters of the Travnik Barracks until 15 November 1996. From 15 November 1996 to 24 October 1997 he served as an officer in the 312 Mountain Unit.

4. He alleges that the rank of major which he held in the JNA was never recognised and that he therefore served in the ARBiH with a rank lower than that with which he had left the JNA. Headquarters of the 7<sup>th</sup> Corps and the Travnik Headquarters made several proposals to the Headquarters of the ARBiH to promote the applicant to his former rank in the JNA but Headquarters never followed this proposal. Moreover, the applicant alleges that the payment he received corresponded to the rank of a private soldier.

5. On 23 October 1997 Army Unit ("*Vojna Jedinica*") 5040, Bugojno, of the command of the 1<sup>st</sup> corps delivered a decision suspending the applicant's military service. The applicant appealed against this decision to Army Unit VJ 5021, Sarajevo, which confirmed the first instance decision on 20 November 1997. The applicant was informed in the decision that, under the Law on Administrative Disputes, an appeal against this decision was possible. On 22 December 1997 the applicant submitted an appeal to the Supreme Court of the Federation of Bosnia and Herzegovina. On 13 May 1998 the Supreme Court issued a procedural decision by which the First Instance Decision of 23 October was annulled and the case was sent back to the first instance organ for re-consideration. The Supreme Court held that both the Decision of 23 October 1997 and the confirming Decision of 20 November 1997 were based on an inaccurate establishment of the facts of the case and that therefore the case could not have been solved in a fair way and in accordance with the relevant provisions on administrative proceedings.

## **II. COMPLAINTS**

6. The applicant complains that the rank he had held in the JNA was not respected, first in the Army of the Republic of Bosnia and Herzegovina and then in the Army of the Federation of Bosnia and Herzegovina, that he was dismissed from his occupation as an officer of the Army.

## **III. PROCEEDINGS BEFORE THE CHAMBER**

7. The applicant lodged his application directly with the Chamber on 12 December 1997 where the application was registered on 22 December 1997. The applicant is not represented.

#### IV. OPINION OF THE CHAMBER

8. Before considering the case on its merits the Chamber has to decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. Under this provision the Chamber must take into account, *inter alia*, whether other effective remedies exist and whether the applicant has demonstrated that they have been exhausted, whether the Chamber was competent *ratione temporis*, whether the application falls within the Chamber's jurisdiction *ratione materiae* and whether the application was manifestly ill-founded.

9. Article XVI of the Agreement states that the Agreement shall enter into force upon signature. As the Agreement was signed on 14 December 1995 the Chamber is only competent *ratione temporis* to consider events which happened after that date or, if they happened before then, constitute a violation continuing after that date. The events which occurred before that date are therefore outside the Chamber's competence *ratione temporis*.

10. The European Convention of Human Rights does not contain a right to access to public service nor does it contain the right to fair wages (European Court of Human Rights, *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A No. 70, paragraph 48). The applicant's complaints could come within the ambit of Article 7 (a) and (c) of the United Nations Covenant on Economic, Social and Cultural Rights. However, under Article II paragraph 2 of the Agreement the Chamber only has jurisdiction to consider whether there has been "alleged or apparent discrimination" in relation to the rights guaranteed by the Covenant and other international instruments referred to. The applicant has not alleged that there has been any such discrimination. Furthermore it is not apparent from the facts of the case that the applicant has been the victim of such discrimination.

11. The applicant's complaints in relation to his rank, his dismissal and the fact that he was not paid in accordance with his rank he had held in the JNA cannot be related to any of the rights and freedoms guaranteed under Article II paragraph 2 of the Agreement.

12. The Chamber therefore finds that the case is outside its competence *ratione materiae*.

13. For this reason, the Chamber, unanimously,

#### DECIDES TO DECLARE THE APPLICATION INADMISSIBLE

(signed) Peter KEMPEES  
Registrar of the Chamber

(signed) Michèle PICARD  
President of the Panel