DECISION ON THE ADMISSIBILITY

in

CASE No. CH/97/47

Milovan POROPAT

against

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 10 June 1998 with the following Members present:

Michèle PICARD, President
Manfred NOWAK, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jakob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Vitomir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the Application by Milovan Poropat against the Federation of Bosnia and Herzegovina submitted on 14 July 1997 under Article V(5) of the Human Rights Agreement to the General Framework Agreement for Peace in Bosnia and Herzegovina (the "Agreement") and registered on 18 August 1997 under Case No. CH/97/47;

Adopts the following Decision on the admissibility of the Application under Article VIII(2) of the Agreement.

I. THE FACTS

1. The applicant is a mechanical engineer and lives in Vogošća, Sarajevo. Before the outbreak of hostilities, he worked at the firm "Unis-Pretis", a State-owned firm, in Vogošća. The applicant alleges that he was unable to work at the firm's plant in Vogošća during the hostilities as he is not of Serb descent. He is of Croat descent.

2. Upon the outbreak of hostilities in April 1992, the head office of Unis-Pretis moved to a part of Sarajevo that was under the control of the Government of the Republic of Bosnia and Herzegovina. The applicant states that he was unable to report for work. On 18 April 1992, the applicant was given notice of termination of his employment under Article 15 of the Decree with Force of Law on Employment During State of War or imminent Threat of War (SL RBiH 21/92). This decision was stated to be on the ground that the applicant was resident on territory controlled by Bosnian Serb forces.

3. The applicant reported to the Head Office of the company on 1 March 1996, after the integration of Vogošća into the Federation of Bosnia and Herzegovina (the "Federation") on 23 February 1996. He appealed against the decision of 18 April 1992 referred to at paragraph 2 above. The Director of the Company issued a procedural decision on 16 April 1996 (Ref: 89/96) in accordance with the statute of the company, under which the applicant was placed on a waiting list for employment with effect from 1 March 1996. The decision was stated to have effect from the date of its issuance.

4. On 2 December 1996, the applicant wrote to the Steering Board of Unis-Pretis requesting that the above decision of 1 March 1996 placing him on the waiting list for employment be revoked. He claimed that the decision was not in accordance with domestic law and because it constituted discrimination on the grounds of national origin, contrary to the 1966 Convention on the Elimination of All Forms of Racial Discrimination. No reply from Unis-Pretis to this letter has been supplied to the Chamber.

5. On 12 March 1997, the applicant submitted a request for the initiation of criminal proceedings to the Cantonal Magistrate's Court in Sarajevo. This request was directed against Unis-Pretis and its Director, Hilmija Nikšić. He claimed that criminal proceedings should be initiated against these persons on the ground that their actions in relation to the applicant were contrary to Article 89 of the Law on Basic Employment Rights.

6. In addition, the applicant initiated civil proceedings before the First Instance Court I in Sarajevo on 18 March 1997. In these proceedings, the applicant claimed that the decision of 18 April 1992 (see paragraph 2 above) was unlawful. This was on the ground that that decision gave the applicant's presence on territory controlled by Bosnian Serbs as the reason for giving him notice of termination of his employment. According to the applicant, this was not a valid ground under the Decree with Force of Law on Employment During State of War or immediate Threat of War.

7. The applicant requested that the decision of 16 April 1996 be annulled and that he be reinstated to a position at Unis-Pretis commensurate with his qualifications and abilities; that he be insured in respect of healthcare and pension for the period since the above decision and that he be paid a sum equivalent to the average monthly salary in Bosnia and Herzegovina since the date of the decision. These proceedings are still pending. A hearing was held on 11 November 1997, which did not decide the case.

II. COMPLAINTS

8. The applicant complains that there has been a violation of his rights as guaranteed by Article 6 of the European Convention on Human Rights (the "Convention") in that his civil rights were not determined within a "reasonable time". He also claims that his rights as guaranteed by the

International Convention on the Elimination of All Forms of Racial Discrimination 1966 have been violated in that he was discriminated against on the grounds of national origin.

III. PROCEEDINGS BEFORE THE CHAMBER

9. The application was submitted to the Chamber on 14 July 1997. It was registered by the Registry of the Chamber on 18 August 1997. The applicant is represented by Ms. Senija Poropat, a lawyer practising in Vogošća. The Chamber considered the application at its plenary session on 14 May 1998.

IV. THE LAW

10. Before considering the merits of the case, the Chamber must decide whether to accept the case taking into account the criteria for admissibility set out in Article VIII(2) of the Agreement.

11. The Chamber notes that the decision placing the applicant on a waiting list for employment was taken on 16 April 1996 (see paragraph 3 above). The applicant initiated court proceedings against this decision on 18 March 1997.

A. Article 6 of the Convention

12. One of the guarantees provided by Article 6 of the Convention is the right to a fair trial within a reasonable time. The European Court of Human Rights has held that this guarantee is of "extreme importance for a good administration of justice" (*inter alia*, Guincho v. Portugal, judgment of 10 July 1984, Series A No. 81, paragraph 38). That Court has also held that the "reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the (European) Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities." (*inter alia*, Vallée v. France, judgment of 26 April 1994, Series A No. 289-A, paragraph 34).

13. The Chamber notes that the applicant initiated proceedings before the Court of First Instance I in Sarajevo on 18 March 1997. Accordingly the time to be taken into consideration by the Chamber in determining whether or not the time has been reasonable or not begins on that date.

14. There are no indications before the Chamber that the case is particularly complex or that the conduct of the applicant and/or the national authorities unnecessarily prolonged the proceedings.

15. At any rate, in view of the prevailing circumstances, the Chamber does not consider that the period that has elapsed since the applicant initiated proceedings (approximately 1 year and 2 months) is excessive for the determination of the case.

16. Accordingly, the Chamber considers that it should refuse to accept the application on the grounds that it is manifestly ill-founded, in accordance with the terms of Article VIII(2)(c) of the Agreement.

B. The 1966 Convention on the Elimination of All Forms of Racial Discrimination

17. The Chamber notes that as it has found the applicant's claim that the domestic proceedings he initiated have not been determined within a "reasonable time" should be dismissed as manifestly ill-founded, it cannot find that the remedies available to the applicant at internal level are ineffective. The applicant cannot therefore be absolved from his duty to exhaust such remedies. As the proceedings initiated by the applicant are still pending, he has not exhausted the domestic remedies available to him. Accordingly, the applicant's claim that he has suffered discrimination contrary to the

1966 Convention on the Elimination of All Forms of Racial Discrimination cannot be accepted by the Chamber in accordance with Article VIII(2)(a) of the Agreement as he has not demonstrated that he has exhausted the remedies available to him, nor that those remedies are ineffective.

For these reasons, the Chamber unanimously

DECIDES TO DECLARE THE APPLICATION INADMISSIBLE

(signed)	Peter KEMPEES Registrar of the Chamber	(signed)	Michèle PICARD President of the Chamber