



DECISION ON THE ADMISSIBILITY

in

CASE No. CH/97/54

Mile MITROVIĆ

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
Vitimir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the Application by Mile Mitrović against the Federation of Bosnia and Herzegovina submitted on 28 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 19 August 1997 under Case No. CH/97/54;

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

I. THE FACTS

1. The applicant is an electrician and used to live in Grbavica, Sarajevo. Before the outbreak of hostilities, he worked at the firm "Elektroprivreda," a State-owned firm, in Sarajevo. The applicant alleges that he was unable to report for work as the firm's premises in Sarajevo during the hostilities as they were located in Bosnian Government controlled territory and Grbavica was controlled by Bosnian Serb forces.

2. The applicant's employment was terminated by a decision of the company dated 30 October 1993 (reference 1.1/504-1782/93) on the ground that he had not reported for work without good reason.

3. The applicant reported to the Head Office of the company on 30 March 1996, after the integration of Grbavica into the Federation of Bosnia and Herzegovina (the "Federation"). On this date, the applicant submitted an objection to Elektroprivreda against the decision dated 30 October 1993. This objection was dismissed, and the original decision confirmed, by the management of the company on 18 June 1996 by decision number 10/585-8802-14/96. This decision was delivered to the applicant on 25 June 1996.

4. On 10 July 1996, the applicant initiated proceedings before the Court of First Instance II in Sarajevo, claiming that the termination of his employment was unlawful. The Court issued a decision on 2 June 1997, rejecting the applicant's claim. It noted that the applicant had been a member of the Civil Defence of the Republika Srpska during the hostilities and that this constituted a ground for dismissal of the applicant under Article 15 of the Decree with Force of Law on Employment During State of War or immediate Threat of War (SL RBiH 21/92). The Court held that the procedural decisions taken by Elektroprivreda were lawful.

5. On 30 June 1997, the applicant appealed to the Cantonal Court in Sarajevo against the above decision of the Court of First Instance II. This appeal was based on the ground that Article 15 of the Decree with Force of Law on Employment During State of War or immediate Threat of War was contrary to the Constitution of Bosnia and Herzegovina. No decision has been taken on this appeal as of yet.

II. COMPLAINTS

6. 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 Discrimination 1966 have been violated. He did not specify the alleged violations he has suffered.

III. PROCEEDINGS BEFORE THE CHAMBER

7. The application was submitted to the Chamber on 28 July 1997. It was registered by the Registry of the Chamber on 19 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

8. 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.

9. The Chamber notes that the initial decision terminating the applicant's employment was taken on 30 October 1993 and confirmed by a decision dated 18 June 1996 (see paragraphs 2 and 3 above). The applicant initiated court proceedings against the second decision on 10 July 1996.

A. Article 6 of the Convention

10. 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).

11. The Chamber notes that the applicant initiated proceedings before the Court of First Instance II in Sarajevo on 10 July 1996. Accordingly the time to be taken into consideration by the Chamber in determining whether or not the time has been reasonable begins on that date.

12. 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.

13. 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 (exactly 1 year and 11 months) is excessive for the determination of proceedings of the present nature, in particular in view of the fact that the Court of First Instance II has issued a decision on the proceedings.

14. 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

15. 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