DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 October 1999)

Case no. CH/98/1171

Ševala ČUTURIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 September 1999 with the following members present:

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

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, 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 Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. Until 1993 she worked at the Institute for Health Protection ("the Institute") in Banja Luka, Republika Srpska. On 28 January 1993 the Institute terminated the applicant's employment. The applicant's complaint concerns the proceedings before the Court of First Instance ("the Court") in Banja Luka which she initiated in 1993 against this decision. These proceedings are still pending before the Court.

2. The case raises issues primarily under Article 6 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 21 September 1998 and registered on the same day under the above case number. The applicant is represented by Mr. Drago Malešević, a lawyer practising in Banja Luka.

4. At its session in November 1998 the First Panel of the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure, to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 8 January 1999.

5. No observations were received from the respondent Party.

6. On 18 January 1999, the applicant was requested to submit a written statement and any claim for compensation or other relief which she wished to make. This statement, containing a claim for compensation, was received by the Chamber on 4 February 1999.

7. On 16 February 1999, the applicant's written statement was transmitted to the Agent of the respondent Party for observations on the claim for compensation. No observations were received from the respondent Party.

8. On 22 April 1999 the Chamber received certain information from the Organisation for Security and Cooperation in Europe ("OSCE") relating to the case. This information was sent to the parties on 15 July 1999.

9. The First Panel deliberated upon the admissibility and merits of the application and adopted its decision on 8 September 1999.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

10. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

11. On 28 January 1993 the applicant's employment at the Institute was terminated by the Director of the Institute. The reason given for this termination was that a member of her family had failed to comply with a mobilisation order to join the Army of the Republika Srpska ("VRS"). On 11 February 1993 the applicant initiated proceedings before the Court against this decision. In these proceedings she claimed that the grounds for her dismissal were incorrect. She stated that she lived alone and provided a certificate of the Ministry of Defence of the Republika Srpska showing that her brother, the only family she has, had complied with his working obligations.

12. On 10 July 1995 the Court held a hearing in the case, which did not decide it. The Court has requested certain information from the Institute relating to the case, which it has not received to

date. The applicant's proceedings are still pending before the Court.

13. On 22 April 1999 the Chamber received certain information relating to the case from the Banja Luka office of the OSCE (see paragraph 8 above). This information is to the effect that the dismissal of the applicant was not in accordance with the laws of the Republika Srpska and that the applicant's complaint to the Institute against her dismissal was rejected. On 10 July 1995 a hearing was held in the case. The Court has repeatedly requested the Institute to submit all relevant documentation relating to the applicant to it, which has not been done to date. The reason given for this is that the Institute's building is being renovated and the Institute does not have access to the information at present.

B. Relevant legislation

14. Article 434 of the Law on Civil Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77) states that in disputes concerning employment, the Court shall pay special attention to the need to solve such disputes as a matter of urgency.

IV. COMPLAINTS

15. The applicant complains that her right to work has been violated.

V. SUBMISSIONS OF THE PARTIES

16. The respondent Party has not made any submissions regarding the application.

17. The applicant maintains her complaint. She states that the Court has remained completely passive in relation to her proceedings.

VI. OPINION OF THE CHAMBER

A. Admissibility

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

1. Competence *ratione temporis*

19. The Chamber must consider to what extent it is competent *ratione temporis* to consider the case, bearing in mind that the dismissal of the applicant occurred in 1993, prior to the entry into force of the Agreement. The Chamber has previously held that it can only consider events that occurred after the entry into force of the Agreement (see e.g. case no. CH/97/67, *Zahirović,* decision on admissibility and merits delivered on 8 July 1999, paragraph 104, Decisions January-July 1999). Accordingly, the dismissal of the applicant cannot be considered by the Chamber as it occurred prior to the entry into force of the Agreement and is therefore outside the Chamber's competence *ratione temporis*.

20. The applicant's proceedings before the Court have been pending since 11 February 1993. The time that the Chamber can take into account commences on 14 December 1995, the date of entry into force of the Agreement.

21. Accordingly, the Chamber is competent to examine the case insofar as it relates to the conduct of the applicant's proceedings insofar as they have continued after 14 December 1995.

2. Requirement to exhaust effective domestic remedies

22. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

23. As noted above, the applicant initiated proceedings against her dismissal before the Court on 11 February 1993. These proceedings are still pending. There is no ordinary remedy available to the applicant in the legal system of the Republika Srpska against the failure of the Court to decide on her proceedings. Accordingly, the Chamber does not consider that there is any effective remedy available to the applicant which she should be required to exhaust. In addition, the Chamber notes that the respondent Party has not sought to claim that there is any effective remedy available to the applicant.

24. The Chamber does not consider that any of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible insofar as it relates to the continuation of the applicant's domestic proceedings after 14 December 1995.

B. Merits

25. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention and the other treaties listed in the Appendix to the Agreement.

1. Article 6 of the Convention

26. Although the applicant did not specifically allege a violation of her rights as guaranteed by this provision, she complained in a general manner of the length of the proceedings she initiated before the Court. Accordingly, the Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case.

27. Article 6 of the Convention, insofar as relevant to the present case, reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."

28. The respondent Party did not submit any observations under this provision.

29. The Chamber must examine whether the dismissal of the applicant from her employment concerns a "civil right" within the meaning of Article 6 of the Convention. The Chamber notes that it has already held that matters concerning employment relate to "civil rights" (see *Zahirović, sup. cit.*, paragraph 135). Article 6 is therefore applicable to the proceedings in question.

30. The Chamber has already noted that the applicant initiated proceedings before the Court on 11 February 1993. However, for the reasons set out at paragraph 19 above, the period of time that may be taken into account by the Chamber in its consideration of the case commences on 14 December 1995, the date of entry into force of the Agreement. The Chamber must therefore consider whether this period of time has been reasonable within the meaning of the first paragraph of Article 6 of the Convention.

31. Accordingly, the period of time that may be taken into account by the Chamber is three years and nine months (as of September 1999). The Chamber must also take into account the state of proceedings as at the date of entry into force of the Agreement. At that time, they had already been pending for two years and approximately ten months, one hearing having been held.

32. The Chamber has held that the factors to be taken into account in determining whether the length of civil proceedings has been reasonable are as follows: the complexity of the case, the conduct of the applicant and the conduct of the national authorities (case no. CH/97/54, *Mitrović,* decision on admissibility of 10 June 1998, paragraph 12, Decisions and Reports 1998).

(a) The complexity of the case

33. According to the information contained in the Chamber's file, the case does not appear to be a complex one. It concerns a dispute over the termination of the applicant's employment by her employer. The core of the dispute appears to be whether the reason given by the Director of the Institute for the termination of the applicant's employment was a valid one under the law of the Republika Srpska or not.

(b) The conduct of the applicant

34. On the basis of the information provided to the Chamber, there does not appear to be any conduct on the part of the applicant which could be considered to be responsible for the delay in the proceedings.

(c) The conduct of the national authorities

35. The Chamber notes that there has been one hearing held in the case to date, on 10 July 1995. The apparent reason (see paragraphs 12-13 above) for the failure to decide on the case is the failure of the Institute to supply certain information to the Court. The Chamber cannot accept that this is a valid reason for the proceedings to have lasted as long as they have. The reason given by the Institute for the failure to supply the requested information is not only dubious in itself, but even if it were true could not have lasted for such a long period as in the present case. The response of the Court, however, has been merely to repeat the request. The Chamber considers that the conduct of the Court has therefore been unreasonable. Faced with such apparent non-cooperation by one of the parties to proceedings before it, the Court could have considered the use of coercive powers to force the Institute to comply with the request, or decided the case in the absence of such information. In addition, national law requires employment disputes to be dealt with as a matter of urgency.

36. Accordingly the Chamber considers that the conduct of the Court has been unreasonable as it has remained passive as regards the failure of the Institute to supply the information requested by it.

37. The Chamber therefore finds that the length of time that the applicant's proceedings have been pending before the Court is unreasonable and that the applicant's right to a fair trial within a reasonable time guaranteed by Article 6 paragraph 1 of the Convention has been violated as a result.

2. The right to work

38. The applicant claimed that her right to work had been violated. This right is not guaranteed by the Agreement. Accordingly the Chamber cannot consider whether the applicant's right to work has been violated, except in the context of possible discrimination.

3. Article I(14) of the Agreement

39. The applicant did not claim that she had been a victim of a violation of Article I(14) of the Agreement which prohibits discrimination in the enjoyment of the rights as referred to in Annex 6. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case.

40. Under Article II(2)(b), the Chamber has jurisdiction to consider complaints of alleged or apparent discrimination on a wide range of grounds in the enjoyment of the rights guaranteed in the instruments appended to Annex 6. After its examination of the case, the Chamber does not consider it established that the applicant has been discriminated against in the enjoyment of any of the rights guaranteed by Article I(14) of the Agreement.

VII. REMEDIES

41. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

42. The Chamber notes that the applicant claimed KM 15,500 for lost salaries and social insurance for the period since she was dismissed.

43. The Chamber has already found that the applicant's dismissal is outside its competence *ratione temporis* (see paragraphs 19-21 above). Accordingly, the Chamber cannot award the applicant compensation for lost salaries or other pecuniary matters relating to her dismissal. In addition, the Chamber cannot award the applicant any sums relating to the period after the entry into force of the Agreement, as the applicant's domestic proceedings have not yet been decided and therefore the Chamber is not in a position to decide whether the applicant should have been reemployed by the Institute.

44. The Chamber notes that it has found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6(1) of the Convention. It considers it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's proceedings are decided upon in a reasonable time by the Court and that the continued proceedings are conducted entirely in accordance with the applicant's rights as guaranteed by the Agreement.

VIII. CONCLUSION

45. For the above reasons, the Chamber decides,

1. by 6 votes to 1, to declare the application admissible insofar as it relates to the continuation of the applicant's proceedings after 14 December 1995;

2. unanimously, to declare the remainder of the application inadmissible;

3. by 6 votes to 1, that the failure of the Court of First Instance to decide upon the applicant's court proceedings against her dismissal constitutes a violation of her right to a fair trial within a reasonable time in the determination of her civil rights and obligations within the meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that there has been no violation of the applicant's rights as guaranteed by Article I(14) of the Agreement;

5. unanimously, to order the Republika Srpska to take all necessary steps to ensure that the applicant's proceedings before the Court of First Instance are decided upon in a reasonable time and in accordance with the applicant's rights as guaranteed by the Agreement; and

6. unanimously, to order the Republika Srpska to report to it by 8 January 2000 on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel