



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/532

Biljana HAŠIMBEGOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel 15 October 1998 with the following members present:

Mr. Manfred NOWAK, President of the Panel,
Mr. Giovanni GRASSO, Vice-President
Mr. Jakob MÖLLER
Mr. Vlatko MARKOVIĆ
Mr. Mehmed DEKOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Leif BERG, 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 Article VIII(2) (a) and (c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. THE FACTS

1. The applicant is an economist and resides in Ciglane, Sarajevo. She previously worked for Radio Television Bosnia and Herzegovina ("RTV BiH"), a publicly-owned company based in Sarajevo. On 16 November 1990, she commenced two years of unpaid leave from her employment, having obtained permission from her employer to do so. This decision was revoked by RTV BiH on 15 March 1992 and the applicant was ordered to return to work as and from 9 April 1992. The applicant never received any written decision to this effect. From 9 April to 27 April 1992 inclusive, the applicant was absent from work on sick leave. She was in possession of medical certification. She returned to work on 28 April 1992 and worked for the following two days also, i.e. until 30 April 1992.

2. The applicant was unable to come to work after that date due to the level of hostilities in Sarajevo. She was unable to inform her employer of this fact, as there was no effective means of communication available to her. The applicant and her two children left Sarajevo by organised convoy on 19 May 1992.

3. In September 1996, the applicant returned to Sarajevo. She reported to RTV BiH for work but was informed that her employment had been terminated with effect from 31 January 1993. She was given a copy of a decision of her employer to this effect, dated 15 January 1996. She lodged a complaint with her employer against this decision on 24 September 1996. This complaint was rejected on 1 October 1996.

4. The applicant initiated proceedings with the Court of First Instance II in Sarajevo on 23 October 1996 and made a further submission relating to those proceedings on 1 January 1997. In a judgment dated 22 July 1997, the applicant's claim was rejected. She received a copy of this decision on 25 August 1997. The applicant appealed against this decision on 27 August 1997. This appeal was rejected by a judgment of the Cantonal Court in Sarajevo, dated 25 December 1997. No further appeal lay open to the applicant.

II. COMPLAINTS

5. The applicant complains that her right to equality before the law has been violated, as well as her rights as guaranteed by the following instruments: her right to work, as guaranteed by the Constitution of the Federation of Bosnia and Herzegovina; the European Convention on Human Rights (the "Convention"); the International Convention on the Elimination of All Forms of Racial Discrimination; Articles 23 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women; the United Nations Convention on the Rights of the Child and the European Social Charter.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was submitted to the Chamber on 14 April 1998. It was registered on 13 May 1998. As provided for in Rule 49(2) of the Rules of Procedure, the application is being declared inadmissible at once by the Chamber. Accordingly, the application was not transmitted to the respondent Party.

IV. OPINION OF THE CHAMBER

7. 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.

8. The Chamber notes that it is not competent to consider alleged violations of human rights which occurred before 14 December 1995, the date on which the Agreement entered into force (see Case No. CH/96/1, *Matanović v. Republika Srpska*, Decision on Admissibility of 13 September 1996).

9. In the present case, the applicant's complaints partly relate to events that took place prior to 14 December 1995. These complaints are therefore not within the competence of the Chamber *ratione temporis* and are accordingly inadmissible. As to the proceedings which took place after 14

December 1995, the applicant has provided no evidence to substantiate her allegation of denial of equality before the law.

10. Accordingly, the Chamber considers that it should refuse to accept the application on the grounds that it is partly outside the Chamber's competence *ratione temporis* and partly manifestly ill-founded, in accordance with the terms of Article VIII(2)(a) and (c) of the Agreement.

V. CONCLUSION

11. For these reasons, the Chamber, by four votes against two,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Manfred NOWAK
President of the Panel

ANNEX

In accordance with rule 61 of the Chamber's Rules of Procedure this annex contains a separate dissenting opinion by Manfred Nowak:

I feel that this application should not have been declared inadmissible, at least not at this early stage. According to the files, the applicant was dismissed from a publicly-owned company by a decision of 15 January 1996 with retroactive effect. I, therefore, do not agree that this decision is outside the competence of the Chamber *ratione temporis*. Her allegations that her right to equality before the law had been violated by the employer's decision and during the ensuing court proceedings have not been sufficiently investigated.

I am, therefore, of the opinion that the decision of the Panel to declare the application inadmissible was premature. The complaint should rather have been transmitted to the respondent Party for observations in order to enable the Panel to arrive at a well reasoned decision.