



DECISION ON REQUEST FOR REVIEW

CASE No. CH/98/552

Nenad POŽEK

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 11 June 1999 with the following members present:

Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIC

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the applicant's request for a review of the decision of the Second Panel of the Chamber on the admissibility of the aforementioned case;

Having considered the First Panel's recommendation;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina as well as Rules 63-66 of the Chamber's Rules of Procedure:

I. FACTS AND COMPLAINTS

1. The applicant complains that he has been discriminated against in relation to his right to work in the field in which he is qualified. The applicant is currently employed in Sarajevo as a security officer by the Bank for Reconstruction and Development of Bosnia and Herzegovina (Banka za obnovu i razvoj BiH d.d., "the Bank"). The applicant is qualified to work as a central heating assembler. In August 1996, the applicant requested that he be re-deployed to this position. This application was unsuccessful.

2. On 26 November 1996, the position of the central heating assembler was filled by an external candidate with a lower grade qualification. On 23 December 1996, the applicant was assigned to work as a heating assembler while the external candidate completed his course work. The applicant worked as the central heating assembler until 19 May 1997, when he was again demoted to work as a security officer. The applicant appealed or complained unsuccessfully against these decisions to his employer, to the local labour inspectorate, Ministry of Internal Affairs and the Ministry of Social Policy for Displaced Persons and Refugees of the Federation of Bosnia and Herzegovina, and the Ombudsmen of the Federation.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced against the State of Bosnia and Herzegovina on 18 April 1998 and registered on 14 May 1998.

4. On 15 October 1998 the Second Panel adopted its decision in the case, declaring it inadmissible as being manifestly ill-founded pursuant to Article VIII(2)(c) of the Agreement, as the applicant had not substantiated this claim that he had been discriminated against.

5. On 15 January 1999 the Second Panel's decision was communicated to the parties in pursuance of Rule 52. On 3 April 1999 the applicant submitted a request for a review of the decision. In pursuance of Rule 64(1) the request was considered by the First Panel which, on 13 May 1999 decided to recommend to the plenary Chamber that the request be rejected. The plenary Chamber considered the request and the First Panel's recommendation on 11 June 1999.

III. REQUEST FOR REVIEW

6. In the request for review the applicant argues that the Chamber did not consider all the statements and documentation presented. It is argued that the Chamber's decision on admissibility of 15 October 1998 did not precisely define the job descriptions of the applicant and his co-worker nor did the decision accurately reflect the conditions surrounding the applicant's demotion.

IV. OPINION OF THE FIRST PANEL

7. The First Panel notes that the request for review has not been lodged within one month from the date of communication of the Second Panel's decision. As the request therefore does not meet the condition set out in Rule 63(2), the First Panel unanimously recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

8. The Chamber first recalls that under Article X(2) of the Agreement it shall normally sit in panels of seven members. When an application is decided by a Panel, the plenary Chamber may decide, upon motion of a party to the case or the Human Rights Ombudsperson to review the decision. Article XI(3) of the Agreement stipulates that subject to the aforementioned review the decisions of the Chamber shall be final and binding. Under Rule 63(2) of the Rules of Procedure any request for review shall be made within one month of the date on which the Panel's decision is communicated to the parties under Rule 52 or delivered under Rule 60. The request shall specify the grounds invoked in support of a review. Under Rule 64(1) the request shall be referred to the Panel which did not take the challenged decision, and that Panel shall make a recommendation to the

plenary Chamber as to whether the decision should be reviewed. The plenary Chamber shall consider the request for review as well as the recommendation of the aforementioned Panel, and shall decide whether to accept the request. It shall not accept the request unless it considers (a) that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) that the whole circumstances justify reviewing the decision (see *Rizvanović and Herak v. The Federation of Bosnia and Herzegovina*, Cases Nos. CH/97/59 and CH/97/69, decisions on requests for review of 13 November 1998, Decisions and Reports 1998, pp. 255-261 and 281-285).

9. The plenary Chamber agrees with the opinion of the First Panel and concludes that the request for review was lodged out of time and therefore does not meet the conditions required for the Chamber to accept such a request pursuant to Rule 63(2).

VI. CONCLUSION

10. For these reasons, the Chamber, unanimously,

REJECTS THE REQUEST FOR REVIEW.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Mr. Giovanni GRASSO,
Vice-President of the Chamber