DECISION ON ADMISSIBILITY AND MERITS

(Delivered on 8 February 2001)

Case no. CH/98/660

Sulejman BABIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2001 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Peter KEMPEES, 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) 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. He lived and worked as an administrator in Pale for the Municipality for fifteen years. During the war, when Pale was under the control of Serb forces, he was displaced to Sarajevo and worked under a compulsory work order for the Pale Municipality's office that had been temporarily established in Sarajevo.

2. At the end of the hostilities and the integration of part of Pale into the Federation of Bosnia and Herzegovina, the Mayor of the newly formed Pale Municipality issued an administrative decision transferring the applicant to a position in Prača. The applicant alleges that he was unable to travel through the Republika Srpska to Prača rendering the decision to transfer him non-executable. The applicant's employment was terminated with effect from 3 June 1996.

3. The applicant appealed against the decisions to transfer him to Prača and terminate his employment to the, then, Court of First Instance I in Sarajevo in July of 1996. As far as the Chamber is aware, these proceedings are still pending before that court today.[1]

4. The applicant complains of a violation of his right to work and that there has been no significant development in the proceedings before the court for over four years.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 22 May 1998 and registered on 9 June 1998.

6. On 21 December 1998 the Registry requested more information from the applicant regarding the state of the proceedings before the Municipal Court I in Sarajevo.

7. On 11 January 1999 the applicant replied that the court proceedings before the court in Sarajevo initiated on 11 July 1996 were still pending and enclosed his written complaint to the court regarding the length of the proceedings.

8. At its session in March 1999 the Chamber, sitting in Panel II, decided, pursuant to Rule 49(3)(b) of the Rules of Procedure, to transmit the case to the respondent Party for its observations on admissibility and merits.

9. The Federation submitted its observations on 13 May 1999. The applicant replied and submitted a claim for compensation on 10 June 1999. The Federation submitted observations on the compensation claim on 15 July 1999. On 4 July 2000 the applicant confirmed that the proceedings before the Municipal Court I, Sarajevo were still pending.

10. The Second Panel deliberated on the case on 8 December 2000 and 10 January 2001 and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

11. The applicant worked in Pale for the Municipality of Pale for fifteen years until the outbreak of the hostilities in 1992. From 1992 until 1996, he was displaced to Sarajevo and worked under a compulsory work order for the Pale Municipality's office that had been temporarily established in Sarajevo during the war due to the occupation of Pale by Serb forces.

[1] It should be noted that in 1997 the Court of First Instance I in Sarajevo was renamed Municipal Court I, Sarajevo.

12. After the General Framework Agreement was signed on 14 December 1995, the parent Municipality of Pale became part of the Republika Srpska and the smaller south eastern part of the Municipality, including the villages of Prača and Goražde, became part of the Federation of BiH. The head office of the Municipality was transferred to Prača and a number of employees were transferred there. Many employees who were transferred to the Prača office lived there. The rest of the officers, including the applicant, were displaced persons who continued to work in Sarajevo. The applicant alleges that these transfers were done without prior defined internal procedures.

13. On 20 April 1996 the Mayor of the, newly formed, Federation of BiH Pale Municipality, issued an administrative decision transferring the applicant to a position in the Prača office. He was assigned the tasks and duties a Disabled Soldiers Protection Officer and was to report to work on 1 May 1996. According to the applicant, this position was fictitious. Further, the applicant states that it was not possible for him to travel between Sarajevo and Prača because the roads were bad, there was no public transport, and the road goes through the Republika Srpska. The applicant states that at that time it was not possible to travel freely between the Republika Srpska and the Federation of Bosnia and Herzegovina. Therefore, the applicant claims that he could not go to work in Prača and the decision was objectively unexecutable.

14. On 6 June 1996 the applicant received a letter from the Head of the Municipality terminating his employment with effect from 3 June 1996. The stated reason for his termination was his failure to appear for work in Prača.

15. The applicant appealed against both administrative decisions to the Pale Municipality without success. The applicant then initiated court proceedings before the, then named, Court of First Instance I in Sarajevo on 11 July 1996. On 9 December 1998 the applicant submitted a written complaint to the Municipal Court I regarding the length of the proceedings. The case is still pending.

B. Relevant domestic law and legislation

16. 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. The new Law on Civil Proceedings contains the same provision in Article 426 (Official Gazette of the FBiH no. 42/98).

17. Article 335 of the Law on State Administration (Official Gazette of the Republic of Bosnia and Herzegovina 26/93), states that a person who is aggrieved by a procedural decision issued by the official managing administrative organ has the right to challenge that decision in the competent court.

18. Article 137 of the Law on Labour Relations of Officials and Employees of Administrative Organs within the Federation of Bosnia and Herzegovina (Official Gazette of the FBiH 13/98), which came into effect on 19 April 1998, provides that a civil servant is entitled to protection of his rights before a competent court or before other organs established by law within in 30 days from the date of receipt of a procedural decision.

IV. COMPLAINTS

19. The applicant alleges that there has been a violation of Article 6 of the European Convention of Human Rights in that he has been denied his right to a fair hearing within a reasonable time before an independent and impartial tribunal. He further alleges a violation of his right to work. The applicant requests compensation from the date of the termination of his employment, 3 June 1996, to the present.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

20. The Federation of Bosnia and Herzegovina claims that the Chamber should declare the case inadmissible due to the applicant's failure to exhaust his domestic remedies. Specifically, the respondent Party claims that the applicant could have addressed the competent administrative labour inspector regarding the legality and correctness of the actions of the Pale municipality.

21. The Federation further asserts that the length of the proceedings is not unreasonable, as it is a "very complex case". Additionally, the Federation claims that the applicant has contributed to the delay in the proceedings as "he has shown an extreme initiative to intensify the proceedings."

B. The applicant

22. The applicant maintains his complaints. He further states that he could not have applied to the Administrative Labour Inspector of Pale in Prača because there is no Labour Inspector there. He further claims that even if he had been able to apply for an administrative inspection, he would have needed to wait for the completion of the investigation. In that case, he would have been precluded from bringing his case to Court because he would have been time barred under the law. The time limit for pursuing a labour dispute in court is not suspended pending an administrative inspection.

VI. OPINION OF THE CHAMBER

A. Admissibility

23. 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. According to Article VIII(2)(c), the Chamber shall dismiss any application that it considers inadmissible *ratione materiae*.

1. The right to work

24. The applicant complains that his right to work was violated. The European Convention of Human Rights does not contain a right to work as such or any right of access to public service or to fair wages (see case No. CH/97/113, *Kovač,* decision on admissibility of 22 July 1998, paragraph 10; with further reference to the European Court of Human Rights, *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A No. 70, paragraph 48). The applicant's complaints could come within the ambit of Article 6 of the United Nations Covenant on Economic, Social and Cultural Rights. However, under Article II paragraph 2 of the Agreement the Chamber only has jurisdiction to consider whether there has been "alleged or apparent discrimination in relation to the rights guaranteed by the Covenant and other international instruments referred to".

25. The applicant has not alleged that there has been any such discrimination. Further, the facts of the case do not establish that the applicant has been the victim of such discrimination. Accordingly, the Chamber finds the applicant's claim regarding his right to work inadmissible *ratione materiae.*

2. Article 6 of the Convention

26. According to Article VIII(2)(a), the Chamber shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

27. In the present case, the Federation argues that the applicant had effective domestic remedies at his disposal. Specifically, the Federation argues that the applicant could have applied to the Administrative Inspector. The laws do not require a person to apply to the Administrative Inspector.

Additionally, as the applicant pointed out, had he applied to the Administrative Inspector and waited for a decision he would have lost his right to bring his case to Court.

28. As noted above, the applicant appealed against both administrative decisions to the Pale Municipality without success. He then initiated proceedings before the, then, Court of First Instance I against both administrative decisions of the Pale Municipality on 11 July 1996. The Federation acknowledges that the applicant brought his case before the appropriate Court of First Instance. Accordingly, the Chamber does not consider that there is any additional remedy available to the applicant that he should be required to exhaust. It follows that, in this regard, the Federation's arguments must be rejected.

29. The Chamber finds that there are no other grounds for declaring the application inadmissible. Accordingly, the case is to be declared admissible insofar as it relates to the length of the applicant's domestic proceedings.

B. Merits

30. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

31. The Chamber will now consider the allegation that there has been a violation of Article 6 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time. The relevant parts of Article 6 paragraph 1 provide as follows:

> "In the determination of his civil rights and obligations. . ., everyone is entitled to a fair. . hearing within a reasonable time..."

32. In the first instance, the Chamber must examine whether the dismissal of the applicant from his employment concerns a "civil right" within the meaning of Article 6 of the Convention, regard being had to the fact that in the present case the proceedings concern the dismissal of a civil servant. Although the applicant worked as a civil servant, he cannot be said to have "exercised powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities." (European Court of Human Rights, *Pellegrin v. France*, judgment of 8 December 1999 to be published in Decisions and Reports 1999). He worked for the Municipality in a purely administrative capacity. In such cases where the nature of the civil servant's employment is not one of exercising discretionary powers, protecting the public, or safeguarding the interests of the State, the European Court of Human Rights has held that Article 6 of the Convention is applicable. (see European Court of Human Rights, *Frydlender v. France*, judgment of 27 June 2000 to be published in Decisions and Reports 2000). Article 6 is therefore applicable to the proceedings in question.

33. The Chamber has already noted that the applicant initiated proceedings before the Court on 11 July 1996. It is from this date that the Chamber must consider the reasonableness of the length of proceedings under Article 6. The proceedings have lasted for approximately four years and seven months as of February 2001.

34. When assessing the reasonableness of the length of proceedings, for the purpose of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case, the conduct of the applicant and the authorities, and the matter at stake for the applicant (see e.g. case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 12, Decisions and Reports 1998).

35. The issue in the applicant's case is whether his working relationship was terminated in accordance with the law. The Chamber cannot find that this issue is of a particularly complex nature. The Chamber further notes that there is no indication that the length of the proceedings can be

imputed to the applicant. The statement by the respondent Party that the applicant is vigorously pursuing his case does not establish that he has contributed to the length of the proceedings. The respondent Party has not proffered any explanation from which it would appear that the delays could not be imputed to the judicial authorities.

36. The Chamber also notes that an employee who considers that his working relationship was wrongly terminated has an important personal interest in a speedy outcome of the dispute and in securing a judicial decision on the lawfulness of this measure considering that his very livelihood depends on it. Further, domestic law requires that matters concerning employment are to be resolved as a matter of urgency (see Article 426 of the Law on Civil Proceedings, Official Gazette of the FBiH no. 42/98). The Chamber therefore finds that what was at stake for the applicant called for particular speed.

37. In the circumstances of the present case, the Chamber finds that there has been a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

VII. REMEDIES

38. Under Article XI(b) of the Agreement the Chamber must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found.

39. In the present case, the Chamber finds it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's case currently pending before the Municipal Court I in Sarajevo is determined by that as a matter of urgency, and in any event not later than three months from the date that the present decision becomes final and binding.

. 40. The applicant requests that the Federation be ordered to compensate him for lost income and related contributions that were not paid since his employment was terminated on 1 June 1996. He requests a total of 425 Convertible Marks (*Konvertibilnih Maraka*) (KM) per month in salary plus contributions amounting to approximately 14% of his salary for the pension fund, plus 140 KM per month meal allowance, plus 300 KM per year for holiday cash grant. In total, he claims approximately 7.334,00 KM per year for the last 5 years, minus the compensation he received until 1 June 1996.

41. The Federation objects to the claim for compensation on the ground that it is not responsible for any injuries the applicant may have suffered. Further, the Federation objects to the amount requested on the ground that the applicant has not shown the basis upon which he calculated his salary. Specifically, he has not shown for which position he calculated his salary or which economic indicators he used. Finally, the Federation argues that the request is too high.

42. In view of the finding in paragraphs 23 and 24 above, that the applicant's claim in respect of his right to work is inadmissible, the Chamber cannot consider any claims in respect of lost income.

43. However, the Chamber has found the Federation in breach of its obligations under the Agreement with respect to the applicant's right to a fair hearing within a reasonable time. As a result, the applicant has suffered some non-pecuniary damage stemming from the absence of a final decision regarding his employment status. The Chamber accepts that living with such uncertainty for over four years has caused the applicant significant emotional distress. Therefore, the Chamber considers that the finding of a violation would not of itself provide just and sufficient satisfaction. Deciding on an equitable basis, it awards the applicant 1000 Convertible Marks (*Konvertibilnih Maraka*) (KM) in this respect.

VIII. CONCLUSION

For these reasons, the Chamber decides

1. unanimously to declare admissible the part of the application relating to the length of the domestic proceedings in the applicant's labour dispute;

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

3. unanimously that the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously to order that the Federation of Bosnia and Herzegovina, through its authorities, take all necessary steps to ensure that the Court decides on the applicant's claim as a matter or urgency, and in any event not later than three months after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

5. unanimously to reject the applicant's claim for pecuniary compensation; and

6. unanimously to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 1000 Convertible Marks (*Konvertibilnih Maraka*) by way of non-pecuniary compensation for mental suffering; and

7. unanimously to order the Federation of Bosnia and Herzegovina to report to it within three months after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above order.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel