# DECISION ON THE ADMISSIBILITY

**CASE No. CH/98/681**

**Damir ALAGIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

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

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

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 and in Bosnia and Herzegovina;

Adopts the following decision pursuant Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## I. FACTS

1. The facts of the case, as they appear from the application and the documents, submitted by the applicant, are as follows:

2. The applicant has been working for the Federal Ministry of Interior from 5 December 1996. In the decision establishing that working relation the applicant was assigned to organise the sector of explosives and other dangerous material at the department of Traffic Safety in the administrative unit for police activity. It was stated in the decision that the applicant fulfiled the professional and other conditions for being assigned to this specific post, as foreseen in the Regulations on Internal Organisation of 1 March 1990 and 5 February 1993.

3. On 31 July 1997 the applicant received a decision terminating the working relations with the Ministry as from 1 November 1997. This decision was based on Article 24 paragraph 3 sub-paragraph 10 of the Law on Internal Affairs of the Federation of Bosnia and Herzegovina ("the Law", Official Gazette of the FBiH No. 1/96) and it was assumed that the applicant was in fact an employee of the former Republic Ministry of Internal Affairs. According to this decision he would have the status of an "unassigned" employee from 1 August 1997 until 31 October 1997. Moreover, according to the new Regulations on the Internal Organisation of the Ministry, some posts had to be cancelled because of the overall reduction of the scope of work within the Ministry. Article 78 paragraph 2 of the Law served as a legal basis for that reasoning.

4. On 31 July 1997 the applicant appealed against this decision, stating that it was obvious from the decision of 5 December 1996 establishing his working relations, that the Ministry in question was the Federal Ministry of Interior and not the Republic Ministry which had already been transformed into the Federal Ministry by the Federal Law on Internal Affairs.

5. On 24 September 1997 the applicant's appeal was rejected as being unfounded. In the reasons given it was stated that, at the time when he established working relations with the Ministry, the Regulations on the Internal Organisation of the Federal Ministry had not been applied. He and all other employees had been assigned to their respective posts under the Regulations on the Internal Organisation of the former Ministry of the Republic. Therefore, his status was equal to the status of an employee of the former Ministry of the Republic. Consequently, he was treated like an employee of the former Ministry of the Republic. As under the new Regulations on the Internal Organisation of the Federal Ministry some of these posts were cancelled, the applicant could not be assigned to a new post.

6. On 7 October 1997 the applicant initiated proceedings before the Court of First Instance I in Sarajevo , seeking to be reinstated.

7. In its response to the applicant's action before the Court of First Instance, the Federal Ministry again emphasised that the applicant had been assigned to his post under the old regulations because, at the time, nobody had been employed directly by the Federal Ministry. Employees had been taken over by the former organs for internal affairs controlled by the BiH Army and the Croatian Council of Defence according to the Regulations on the Internal Organisation of the Federal Ministry of the Interior of 20 August 1996. As the applicant had been assigned under the old regulations he fell into the group of employees of the Ministry which were affected by the reorganisation of the Ministry in mid-1997 and, therefore, his working relation had to be terminated under Article 798 paragraph 2 of the Law on Internal Affairs of the FBiH.

8. The applicant states that the deliberations before the Court of First Instance are constantly postponed and that a hearing was scheduled only for 30 September 1998.

## II. COMPLAINTS

9. The applicant alleges that his right to work was violated and that there has been no development in the proceedings before the Court of First Instance for almost one year.

## III. PROCEEDINGS BEFORE THE CHAMBER

10. The applicant was introduced on 9 June 1998 and registered on 10 June 1998.

## IV. OPINION OF THE CHAMBER

11. Before considering the case on its merits the Chamber has to decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers manifestly ill-founded.

12. 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, Human Rights Chamber, *Kovač v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/113, 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. The applicant has not alleged that there has been any such discrimination. Furthermore, it is not apparent from the facts of the case that the applicant has been the victim of such discrimination.

13. As regards the proceedings before the Court of First Instance in Sarajevo, the Chamber has to examine whether there is any indication of a violation of Article 6 paragraph 1 of the European Convention of Human Rights. This provision reads, as far as relevant, as follows:

> "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 ... ".

14. The Chamber notes that the applicant was in fact employed as a civil servant. The European Court of Human Rights has repeatedly stated that "disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 paragraph 1 of the Convention" (see, e.g, *Neigel v. France*, judgment of 17 March 1997, Reports of Judgments and Decisions 1997-II, p 410, paragraph 43 and *Huber v. France*, judgment of 19 February 1998, paragraph 36). However, the Court treats matters differently where the (disputed) claims in issue relates to a "purely economic" right - such as payment of a salary (see, in particular, the *De Santa v. Italy* judgment of 2 September 1997, Reports 1997-V, paragraph 18), a pension (see the *Francesco Lombardo v. Italy* judgement of 26 November 1992, Series A no. 249-B, pp. 26-27, paragraph 17 and the *Massa v. Italy* judgment of 24 August 1993, Series A no. 265-B, p. 20, paragaraph 26) - or at least an "essentially economic" right (see the *Nicodemo v. Italy* judgment of 2 September 1997, Reports 1997-V, paragraph 18 and the above mentioned, *Huber v. France* judgment, paragraph 36).

15. The present case is mainly related to the termination of the applicant's employment in the Federal Ministry of Interior. Even assuming that Article 6 were to be applicable, as the dismissal of the applicant presumably had repercussions on his economic situation, the Chamber finds that the case is premature. It is true that the Chamber is competent to examine whether the presently pending domestic proceedings reveal either a procedural flaw or procrastination on the part of the tribunal which could not be repaired at a later stage of the proceedings (see, *inter alia*, Human Rights Chamber, *Kevešević v. The Federation of Bosnia and Herzegovina*, Decision on the merits of 10 September 1998, paragraphs 65 and 66 and European Commission of Human Rights, *X. v. Norway,* Decision of 4 July 1978, D.R. 14, p. 229). However, the only question arising for the moment in the present case is the allegedly excessive length of the proceedings before the Court of First Instance I in Sarajevo. The Chamber has already found in a similar case that a period of approximately one year cannot be regarded as excessive for the determination of an employment dispute (see, *Poropat v. The Federation of Bosnia and Herzegovina*, Decision on the admissibility of 10 June 1998, paragraph 16).

16. Accordingly, the Chamber decides not to accept the application, it being manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

## V. CONCLUSION

17. For these reasons, the Chamber, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel