



DECISION ON THE ADMISSIBILITY

CASE No. CH/98/981

Fatima GALIJAŠEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 November 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 to Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant, her husband and their daughter were working as teachers in the primary school "Kulen Vakuf, Orašac". On 27 September 1995 the Headmaster dismissed the applicant as allegedly she violated her duties. The applicant's husband was also dismissed in 1995. Their daughter took up a post in another school.

2. After the School Board refused the applicant's appeal the Municipal Court of Bihać issued a decision on 28 February 1997 in her favour, ordering her re-instatement. However, on 20 November 1997 the Cantonal Court in Bihać granted the appeal lodged by the school, quashed the aforementioned decision and referred the case back to the first instance where it remains pending.

3. The applicant also initiated criminal proceedings against the headmaster and against the Secretary of the Local Community Kulen Vakuf (which forms part of the Municipality Kulen Vakuf). Those have apparently requested the Municipal Elections Committee not to accept the applicant's membership of the Committee because she was a member of the Social Democratic Party. The reason given for this request was that the applicant had allegedly collaborated with the "Chetniks" from Orašac and had also been an accomplice in the detention and killing of people. On 25 February 1998 the Municipal Court decided not to pursue criminal proceedings against the headmaster. The proceedings against the Secretary of the Local Community are apparently still pending.

II. COMPLAINTS

4. The applicant complains that her right to work and her right to fair criminal proceedings have been violated. She further alleges that her membership of the SDP is the major reason for her being accused of collaborating with the "Chetniks", for her subsequent dismissal and for the allegedly unfair criminal proceedings.

5. The applicant requests the Chamber to issue a provisional measure to the effect that the respondent Party be ordered to re-instate her into her post.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 15 September 1998 and registered on the 25 September 1998.

IV. OPINION OF THE CHAMBER

7. 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 incompatible with the Agreement.

(i) The complaint relating to the applicant's dismissal

8. The Chamber has already found in its *Majstorović* decision:

"The General Framework Agreement for Peace in Bosnia and Herzegovina was signed on 14 December 1995. Under Article XVI of the Agreement the Chamber is therefore only competent *ratione temporis* to consider events which happened after that date or, if they happened before then, constitute a violation continuing after that date. The proceedings in 1993 and the allocation of the apartment to the applicant's former wife are therefore outside the Chamber's competence *ratione temporis*" (*Vukasin Majstorović v. The Federation of Bosnia and Herzegovina*, CH/98/61, Decision of 22 July 1998, paragraph 15).

The Chamber notes that the applicant's dismissal took place before the Agreement came into force on 14 December 1995. The application therefore lies outside the Chamber's competence *ratione temporis*.

9. Accordingly, the Chamber decides not to accept this part of the application, it being incompatible *ratione temporis* within the meaning of Article VIII(2)(c) of the Agreement.

(ii) The complaint relating to the pending criminal proceedings

10. Under Article 6 paragraph 1 of the European Convention,

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ... “

Insofar as the application relates to the pending criminal proceedings, the Chamber notes, that the applicant has not herself been “charged” with an offence within the meaning of Article 6 paragraph 1 of the European Convention of Human Rights and it has not been shown that her own “civil rights” would be determined in these criminal proceedings against third parties. This complaint is therefore outside the scope of Article 6 of the Convention.

11. Accordingly, the Chamber decides not to accept this part of the application, it being incompatible *ratione materiae* within the meaning of Article VIII(2)(c) of the Agreement.

V. CONCLUSION

12. 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