



DECISION ON ADMISSIBILITY

Case no. CH/99/1736

Ratka ZIMONJIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 April 2000 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. Anders MÅNSSON, 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) of the Agreement and Rules 49(2) and 52 of the Chamber’s Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent. She worked at the University Medical Center in Sarajevo from 1980 until March 1992. After being on sick leave, she could not return to work due to the hostilities that were taking place between her place of residence and the clinic. From 22 May 1992 she served in a local civil defence unit.

2. On 23 June 1992 the University Medical Center issued a decision that terminated the applicant's employment relationship as from 1 July 1992 because she had not come to work. Allegedly, the applicant did not receive the decision until 9 January 1996.

3. The applicant asserts that she filed an appeal with the Steering Board of the Medical Center immediately after that date but never received an answer. On 25 October 1996 the applicant initiated proceedings before the Municipal Court in Sarajevo aiming at re-instatement in her former employment relationship. After several hearings had been held, the Court rejected her claim on 31 March 1998 for having been submitted out of time.

4. Although the applicant could have appealed against the judgment of the Municipal Court to the Cantonal Court, she refrained from doing so, apparently because she was told by the Cantonal Court that "proceedings could last up to five years" and because she could not afford the legal expenses.

II. COMPLAINTS

5. The applicant alleges that she has been discriminated against in her right to work on grounds related to her nationality.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 17 March 1999 and registered on the same day.

IV. OPINION OF THE CHAMBER

7. Before considering the merits of the case, the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist, and if so, whether the applicant has demonstrated that they have been exhausted. The Chamber must also consider whether the application has been filed within six months from the date of the final decision taken in the applicant's case.

8. The applicant has admitted that she has not appealed against the judgment of the Municipal Court of 31 March 1998, although she was aware of that possibility. It is true that it took the Municipal Court 17 months of consideration and several hearings before rejecting the applicant's claim for being lodged out of time. Nonetheless, this fact cannot release the applicant from the obligation to exhaust all effective domestic remedies. The Chamber cannot find that an appeal to the Cantonal Court would have been an ineffective remedy.

9. Furthermore, the Chamber notes that the applicant introduced her application more than 11 months after the judgment of the Municipal Court of 31 March 1998, thus exceeding the time-limit prescribed in Article VIII(2)(a) of the Agreement.

10. Accordingly, the Chamber decides not to accept the application pursuant to Article VIII(2)(a) of the Agreement, as the applicant has not demonstrated that effective domestic remedies have been exhausted. In addition, it was not introduced within six months from the date of the final domestic decision.

V. CONCLUSION

11. For these reasons, the Chamber, by 6 votes to 1,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

ANNEX Dissenting Opinion of Mr. Manfred Nowak

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Manfred Nowak.

DISSENTING OPINION OF MR. MANFRED NOWAK

I disagree with the decision to declare the present application inadmissible without even having transmitted it to the respondent Party for its observations. The Chamber bases this decision on two grounds: the non-exhaustion of effective remedies and the violation of the time-limit of six months. These two criteria are explicitly mentioned in Article VIII(2)(a) of the Agreement which is modelled to some extent on the inadmissibility grounds of the European Convention on Human Rights. There is, however, an important difference which the Chamber, in my opinion, does not take sufficiently into account. Whereas Article 35 of the European Convention in very strict legal terms obliges the European Court of Human Rights "to reject any application which it considers inadmissible" (Article 35(4) read together with Article 35(1): "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date which the final decision was taken."), Article VIII(2) of the Agreement provides the Chamber with a certain discretionary power to decide which applications to accept and in what priority to address them. In so doing, the Chamber "shall take into account" a number of criteria which go beyond those stipulated in the European Convention. One of these additional criteria is formulated in Article VIII(2)(e) as follows: "In principle, the Chamber shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds." In other words: The Chamber should balance the various criteria, i.e. the seriousness of the alleged human rights violations with the more formal or procedural inadmissibility grounds such as the six months deadline. This means that none of the criteria contained in Article VIII(2) can be considered as absolute or as having priority over other criteria.

In the present case, the applicant alleges that she has been discriminated against in her right to work on grounds related to her Serb nationality. Her claim, therefore, clearly falls under the category of applications which should be given priority by the Chamber. She has submitted her application less than one year after the judgment of the Municipal Court and has given good reasons why she does not consider the appeal to the Cantonal Court as an effective remedy. In my opinion, the Chamber failed to strike a fair balance between the relevant criteria in Article VIII(2)(a) and (e). In fact, it did not even attempt to balance these criteria by wrongly assuming the criteria in Article VIII(2)(a) to be absolute or enjoying priority over other ones.

Moreover, the Chamber has taken this inadmissibility decision in the so-called summary procedure provided for in Rule 49(2) of the Rules of Procedure, i.e. without transmitting the application to the respondent Party for its observations. By transmitting the case under Rule 49(3) and requesting relevant information from the applicant, the Chamber could have easily clarified the question whether the grounds of the applicant not to exhaust domestic remedies and to exceed the six months time-limit were reasonable and justified in the circumstances of the case. On the basis of this information, the Chamber would have been in a much better position to decide on the admissibility of the application by striking a fair balance between the relevant admissibility criteria.

(signed)
Manfred Nowak