



DECISION ON ADMISSIBILITY

Case no. CH/99/2637

M.Č.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 September 2000 with the following members present:

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

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)(c) of the Agreement and Rule 52 of the Chamber's Rules of Procedure:

I. FACTS

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak descent, living in West Mostar. He allegedly suffers from a poor state of health which is due to nine months he has spent in a detention camp of the Croatian Defence Council ("HVO"). He does not specify when this detention occurred. In December 1996 he was examined by doctors in East Mostar. Thereupon he applied for a disability pension to the Pension and Invalidity Insurance Fund in East Mostar ("PIO"). The PIO rejected the applicant's request on the ground that he lived in West Mostar and that he therefore should apply to the Pension and Invalidity Insurance Fund in West Mostar ("MIO"). However, on 10 February 1998 his application to the Commission of the West Mostar MIO ("MIO Commission") of 26 January 1998 was allegedly rejected because the medical documentation had been issued by East Mostar doctors. On 17 February 1998 the applicant appealed to the second instance MIO Commission. His appeal was rejected on 6 March 1998.

2. On 5 May 1998 the applicant initiated an administrative dispute against the MIO before the Cantonal Court (former High Court) in Mostar. On 2 February 2000 his complaint was rejected as ill-founded on the ground that the first and second instance MIO commissions had correctly stated that the applicant does not have sufficient disability to be granted a disability pension.

3. On 21 March 2000 the applicant lodged a complaint against this decision to the same Cantonal Court. It was rejected as untimely on 23 March 2000 because the time-limit under Article 42(1) of the Law on Administrative Disputes (15 days) had expired. In a letter addressed to the Chamber the applicant explains that he failed to observe the time-limit because his wife had an operation on 16 February 2000.

II. COMPLAINTS

4. The applicant alleges inhuman and degrading treatment with regard to the treatment received by the MIO commissions and discrimination on racial grounds. He also complains about the length of the proceedings before the Cantonal Court in Mostar.

5. The case raises issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights (right to peaceful enjoyment of possessions) and under Article 9 of the International Covenant on Economic, Social and Cultural Rights (right to social security) as well as of discrimination in the enjoyment of those rights. It further raises issues under Article 6 of the Convention as far as the length of proceedings before the Mostar Cantonal Court is concerned.

III. PROCEEDINGS BEFORE THE CHAMBER

6. On 14 June 1999 the Chamber received a letter from the applicant and opened a provisional file. The application was received by the Chamber on 28 June 1999 and was registered on the same day. On 10 November 1999 the Chamber decided to transmit the application to the respondent Party for its observations. On 7 January 2000 the Chamber received written observations of the respondent Party. The applicant submitted his written observations in reply on 21 January 2000. He made further submissions to the Chamber on 14 February 2000.

7. On 24 March 2000 the respondent Party submitted to the Chamber further information on the use of medical documentation by the MIO and on the number of its Bosniak beneficiaries. The respondent Party stressed that the MIO accepts any kind of official medical documentation no matter from which part of Mostar it is. After the transmittal of this statement on 14 April 2000 the applicant sent a letter to the Chamber on 21 April 2000 in which he changed his former declaration that the West Mostar MIO had rejected the medical documentation as invalid because it had been issued by East Mostar doctors. The applicant now pointed out that the West Mostar MIO had not accepted the East Mostar documentation because it was too old.

IV. SUBMISSIONS AS TO ADMISSIBILITY

A. The applicant

8. The applicant is of the opinion that the MIO Commission declared the original medical documentation invalid only because it had been issued by East Mostar doctors. The MIO Commission therefore reexamined the applicant and rejected his application for an invalidity pension on the basis of the new medical examination. The applicant questions the quality of the examination made by the MIO Commission. He claims that he was examined for only five minutes by a single doctor who thereupon stated that the applicant does not have any disability. He therefore stresses that the decisions concerning his right to insurance were not based on reliable medical documentation.

9. Furthermore, the applicant complains that the Cantonal Court in Mostar did not decide on his appeal of 5 May 1998 until 2 February 2000. He doubts that this delay was due to the complexity of the case and emphasises that “the Court was suddenly able to issue its decision within only a few days after the Human Rights Chamber had been involved”.

B. The respondent Party

10. The respondent Party denies the submissions made by the applicant in relation to the non-acceptance of the original medical documentation. It points out that the refusal of the East Mostar documentation would have been an unusual practice because normally the West Mostar MIO “accepts any kind of official medical documentation no matter from which part of Mostar it is”. The respondent Party emphasises that, as the medical panels did not establish any disability, the applicant neither acquired a right to disability pension nor any other right arising from disability.

11. In relation to the length of proceedings, the respondent Party claims that administrative cases like the present one concerning the realisation of rights on retirement and disability insurance are complex in nature, that the competent Cantonal Court is properly proceeding and that the above stated excludes that the “reasonable time” requirement was exceeded in the present case.

V. OPINION OF THE CHAMBER

12. 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)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

13. The applicant initially claimed that the MIO Commission in West Mostar had declared the first medical documentation invalid because it had been issued by East Mostar doctors and that he was therefore forced to be examined again by West Mostar doctors. In his letter of 21 April 2000 he changed his statement and pointed out that the documentation previously obtained in the Eastern part of Mostar was only rejected by the MIO Commission because it was too old. His new reasoning is entirely in accordance with the statement of the respondent Party that the MIO Commission usually accepts any kind of official medical documentation no matter from which part of Mostar it is. The Chamber therefore finds that the applicant’s complaint of discrimination in the enjoyment of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention and of the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights is manifestly ill-founded.

14. However, the applicant complained that the decisions of the first and second instance MIO commissions concerning his right to insurance were not based on any sufficient medical documentation. However, in the decision of the Cantonal Court in Mostar of 2 February 2000 the findings of these medical commissions are described as “completed, clear and well substantiated”. According to the Cantonal Court, they contain all facts which are essential from a medical standpoint for the issuance of the correct procedural decision. Moreover, the Cantonal Court states that the commissions have worked in accordance with the provisions of the rules of organization, composition

and work of the competent organs for expertise in the pension and disability insurance, and that the findings and opinions have been signed by three members of the Commission. The Chamber considers that in these circumstances there is no indication of any violation of the rights of the applicant provided in Article 1 of Protocol No. 1 to the Convention and of Article 9 of the International Covenant on Economic, Social and Cultural Rights. Accordingly, the Chamber rejects the corresponding claim of the applicant as manifestly ill-founded.

15. The applicant complains of the length of proceedings before the Cantonal Court in Mostar pointing out that his appeal of 5 May 1998 was not decided until 2 February 2000. The Chamber, making an overall assessment, considers, however, that the length of proceedings (almost one year and nine months) does not exceed a reasonable time within the meaning of Article 6 of the Convention.

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

VI. CONCLUSION

17. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel