



DECISION ON REQUEST FOR REVIEW

Case no. CH/99/2752

Džuma KUNOVAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on July 2003 with the following members present:

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Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the applicant's request for a review of the decision of the Second Panel of the Chamber on the admissibility of the aforementioned case;

Having considered the First Panel's recommendation;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina as well as Rules 63 to 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin, married to a citizen of Bosnia and Herzegovina of Serb origin. Before and at the beginning of the armed conflict in Bosnia and Herzegovina she worked as director of the Company “Slovenka” in Donji Vakuf (employer), now Federation of Bosnia and Herzegovina. In 1993 she handed over the company to the new director upon the order of the Serb authorities. In 1995 she left Donji Vakuf which afterwards became a part of the Federation of BiH. When she returned in Donji Vakuf in 1996 and sought reinstatement into her work, the management of the employer did not allow her. Soon, the employer sent her a decision on termination of her employment, together with other 59 employees. 57 of the fired employees were of Serb origin, and the remaining three were married to Serbs. The applicant objected to this decision, within the time limit prescribed by the law, but the employer never decided upon her appeal. In 1997 the applicant sought reinstatement into her employment before the Municipal Court in Bugojno and Cantonal Court in Travnik but the courts rejected her claim as filed out of time. She also filed a claim to the Cantonal Commission for Implementation of Article 143 of the Law on Labour, but there has been no action on it as of to date.

2. The applicant alleges that she was not reinstated into her work due to discrimination on the ground of ethnic origin and the fact that she is Bosniak married to Serb.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 5 March 2003, the Second Panel adopted a decision declaring the application inadmissible. The Second Panel considered that the applicant has not exhausted domestic remedies because she failed to comply with the time limit prescribed by the law for filing an action against the employer before the competent court. The Second Panel's decision was adopted by six votes in favour and one against. Mr. Nowak attached a dissenting opinion.

4. On 25 May 2003, the Second Panel's decision was delivered to the applicant pursuant to Rule 60 of the Chamber's Rules of Procedure. On 28 May 2003, the applicant submitted a request for review of the decision.

5. In accordance with Rule 64(1) the request for review was considered by the First Panel on 1 July 2003. In accordance with Rule 64(2), on 3 July 2003 the Plenary Chamber considered the request for review and recommendation of the First Panel.

III. THE REQUEST FOR REVIEW

6. In the request for review, the applicant complains that the Chamber neglected the fact that she is the victim of obvious discrimination in the enjoyment of her right to work on the ground of ethnic origin. That discrimination is obvious and proved by the fact that only the Serbs and three employees married to Serbs were fired by the employer. That discriminatory policy is also reflected in the present ethnic structure of the population of Donji Vakuf.

7. Further, the applicant asserts that she was fired on the basis of war regulations, and, according to her opinion, these regulations could not be applied after the cessation of the war, when the decision of termination of her employment was issued. She alleges that the Chamber should not have taken the fact that she did not initiate the court proceedings within the prescribed time limit as a formal reason to declare her application inadmissible. She considers the Chamber neglected the fact that she appealed against the employer's decision on terminating her employment, and that she waited for the employer to decide upon the appeal which never happened. She also considers that the fact that she missed the deadline for filing an action before the court must not be the reason for depriving her of all of her rights, especially the right that her claim be decided by the Cantonal Commission, which the Chamber did not take into consideration.

IV. OPINION OF THE FIRST PANEL

8. The First Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(3)(b).

9. The First Panel recalls that under Rule 64(2) the Chamber “shall not accept the request unless it considers (a) that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) that the whole circumstances justify reviewing the decision”.

10. The First Panel, however, is of the opinion that the grounds upon which the applicant’s request for review are based were in essence already examined and rejected on adequate grounds by the Second Panel when it considered the admissibility of the case. The applicant does not deny that she missed the prescribed deadline for challenging the decision on terminating her employment before the courts and, therefore, she failed to comply with the requirement of the Article VIII(2)(a) of the Agreement. The First Panel concludes that the decision to declare the application inadmissible was taken in accordance with the established case-law of the Chamber.

11. Therefore, the applicant has failed to provide any grounds why the request for review raises “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance” and that “the whole circumstances justify reviewing the decision”. Therefore the First Panel, unanimously, recommends that the request be rejected.

V. OPINION OF THE PLENARY CHAMBER

12. The plenary Chamber agrees with the First Panel that the request for review does not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64(2).

VI. CONCLUSION

13. For these reasons, the Chamber, by 13 votes to 1,

DECIDES TO REJECT THE REQUEST FOR REVIEW.

(Signed)
Ulrich GARMS
Registrar of the Chamber

(Signed)
Michèle PICARD
President of the Chamber