



DECISION ON ADMISSIBILITY

Case no. CH/99/2833

Muharem GASAL

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2003 with the following members present:

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

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

Having considered the aforementioned applications 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. INTRODUCTION

1. The applicant complained of not being reinstated into work after the war and not being paid a compensation for unpaid salaries in the period while he was considered an employee that was put on the waiting list.

II. PROCEEDINGS

2. The application was introduced on 3 September 1999 and registered on the same day.

3. On 13 December 2002 the applicant submitted additional observations in which he alleges that he was reinstated into work and for that reason he withdrew his request in that regard. He maintained his claim for disbursement of a fair compensation for the period while he was considered an employee on the waiting list and of the contributions for his pension and disability insurance.

III. FACTS

4. The applicant, who is of Bosniac origin, was employed at the public company "Elektroprivreda", working unit Elektro Livno at Livno. On 21 July 1993 a conflict broke out between Croats and Bosniacs in Livno. As a consequence the employees of Bosniac ethnicity were given the status of employees on the waiting list. The applicant did not receive any decision or an explanation about his status. He was paid the compensation in the amount of 35% of the salary until 10 February 1994. After that date all the payments stopped.

5. The applicant addressed his employer on several occasions orally and in March 1997 he filed a written request for his reinstatement into work. The employer has never replied to his request.

6. After that, on an uncertain date, the applicant filed a lawsuit against his employer before the Municipal Court in Livno (Općinski sud u Livnu). He requested the court to order his employer to reinstate him into work and compensate him for the unpaid salaries with legal interest and pay the contributions for his pension and disability insurance.

7. On 8 May 2000 Municipal Court in Livno issued a judgement establishing that the applicant's working relation did not cease, but that he had been put on the waiting list, according to the Law on Labour of the Federation of Bosnia and Herzegovina. By the same judgement the employer was obliged to ensure the applicant's reinstatement into work or in another way regulate his working and legal status in accordance with the Law on Labour and recognise him all rights from the working relations until the final regulation of his working and legal status. The judgement became valid on 8 May 2000 as the parties gave up their right to appeal.

8. As the employer did not execute its obligation within the time limit given by the judgement, on 20 June 2000 the applicant filed a request for enforcement of the judgement. On 23 June 2000 Municipal Court in Livno issued a procedural decision authorising enforcement of the valid judgement.

9. However, the employer executed its obligation only in part, by reinstating the applicant into work. The applicant requested that the employer to disburse him the compensation accrued for the period he was put on the waiting list as well as the contributions for the pension and disability insurance.

10. The applicant considered that he is entitled to the compensation in the amount of 35% of the salary, which was paid to other employees as of the date when he was given the status of an employee on the waiting list, until his reinstatement into work. On 10 May 2002 the applicant filed a written request to the employer for disbursement of the compensation. He did not receive any answer. After that, on 9 August 2002 he filed another request to the employer. The employer sent him a reply in which it offered him the amount of 180 KM as compensation for the period while he was put on the waiting list, but the applicant was not satisfied with the amount offered.

IV. COMPLAINTS

11. The applicant considers that his right to a fair compensation during the period while he was put on the waiting list has been violated, which would constitute a violation of his right under Article 1 of Protocol No. 1 to the Convention. The applicant requests that the Chamber order the respondent Party to disburse him compensation while he was put on the waiting list and pay the contributions for his pension and disability insurance

V. OPINION OF THE CHAMBER

12. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

13. The Chamber notes that the judgement of the Municipal Court in Livno of 8 May 2000, ordering the applicant's reinstatement into work, does not contain specified order to the employer to pay the compensation. Because of that, the judgement can not be enforced the way the applicant requested. The applicant could and should file another action before the court requesting the court to order the employer to pay him a specific sum of money by way of compensation. The Chamber notes that the applicant failed to file such an action before the court and he has not shown that this remedy was ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

VI. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATIONS INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel