



DECISION ON ADMISSIBILITY

Case no. CH/00/3933

Srpska Radikalna Stranka

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 December 2000 with the following members present:

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

Mr. Peter KEMPEES, 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 Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. On 22 October 1999 the Serb Radical Party (“the applicant party”) was informed that the OSCE Provisional Election Commission (“the PEC”) had rejected their application for registration for the local elections, which were due to take place on 8 April 2000. This decision was based on a letter dated 4 October 1999 written by the PEC stating that, as a condition for the applicant party to be registered, it had to replace three party leaders and register itself under a new name. However, the applicant party did not meet these conditions.
2. On 28 October 1999 the applicant party appealed to the Election Appeals Sub-Commission (“the EASC”) against the PEC’s decision. On 19 November 1999 the EASC upheld the decision of the PEC.
3. On 19 June 2000 the applicant party was informed that pursuant to Article 402 of the Rules and Regulations of the PEC, it would not be registered for the general elections in Bosnia and Herzegovina, scheduled for 11 November 2000, if it failed to fulfil the above mentioned conditions.
4. The applicant party requested the Chamber to declare Article 402 of the Rules and Regulations of the PEC invalid and to suspend any future decision of the PEC forbidding the applicant party to take part in the November 2000 elections.

II. COMPLAINTS

5. The applicant party alleges that its leaders have been discriminated against because of their political and personal beliefs. Further, the applicant party claims that Article 1 of Annex 3 to the General Framework Agreement and paragraphs 7 and 8 of the attachment to Annex 3 have been violated.

III. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 10 March 2000 and registered on the same day. The applicant party requested the Chamber to order Bosnia and Herzegovina, as a provisional measure, to take all necessary steps to withdraw Article 402 of the Rules and Regulations of the PEC or to suspend the election proceedings until a final decision was reached. On 7 August 2000 the Chamber decided to refuse the request.

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. Since the case concerns actions of the OSCE, the PEC and the EASC, the Chamber has considered whether or not the case is within the competence of the Chamber *ratione personae*.
8. In article IV of the General Framework Agreement, the Parties “welcome and endorse the elections program for Bosnia and Herzegovina as set forth in Annex 3”. In Article II(1) of Annex 3 to the General Framework Agreement, the Parties request the OSCE “to adopt and put into place an elections program for Bosnia and Herzegovina...”. In addition, in Article II(2) of Annex 3, the OSCE is requested to supervise the preparation and conduct of elections for various legislatures in Bosnia and Herzegovina, including the Republika Srpska, “in a manner to be determined by the OSCE and in cooperation with other international organizations the OSCE deems necessary....”
9. The above language is redolent of language used throughout the Annexes to the General Framework Agreement. In particular, in Article I(2) of Annex 10 to the General Framework Agreement, entitled “Agreement on Civilian Implementation on the Peace Settlement”, the Parties request “the designation of a High Representative ... to facilitate the Parties’ own efforts and to mobilize and, as

appropriate , coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement ...” and in Article I(2) of Annex 11, entitled “Agreement on International Police Force” the Parties “request that the United Nations establish by a decision of the Security Council ... a U.N. International Police Task Force (IPTF)”

10. The Rules and Regulations of the PEC derive their authority from powers and responsibilities delegated to the OSCE under Annex 3 to the General Framework Agreement. Article 113 of the PEC’s Rules and Regulations establishes the EASC. Accordingly, the EASC’s jurisdiction also derives from the General Framework Agreement. It is the sole review mechanism of a judicial nature provided for under Annex 3.

11. In concluding the General Framework Agreement, the Parties, with the assistance of the international community, have created a number of offices and institutions to assist them in achieving the objectives set out therein. The parties are required to comply with the decisions of such offices and institutions, as provided for in the General Framework Agreement. As the Chamber has found in similar cases (case nos. CH/98/230&231, *Suljanović and Čišić and Lelić*, decisions on admissibility of 14 May 1998, Decisions and Reports 1998) the functions carried out by the OSCE under Annex 3, which in substance is the management of elections in Bosnia and Herzegovina, pending the entry into force of election legislation enacted by Bosnia and Herzegovina, is not such as to be subject to review, except as specifically provided for in Annex 3. The PEC, established by the OSCE in accordance with Annex 3 to the General Framework Agreement, passed a set of Rules and Regulations regulating the conduct of the elections. Chapter VIII of the Rules and Regulations establishes the EASC. Article 114 sets out the functions of the EASC. Article 114(1) states that the EASC may adjudicate complaints regarding, inter alia, “violations of provisions on elections in the (General Framework Agreement)” as well as complaints regarding violations of the PEC Rules and Regulations. Article 118 clearly indicates that decisions of the EASC are to be binding and without appeal.

12. The OSCE, the PEC and the EASC exclusively carried out the actions complained of within the scope of them carrying out their responsibilities under Annex 3 of the General Framework Agreement. The General Framework Agreement does not provide for the intervention of the respondent Party in the conduct of the elections. Accordingly, these actions are not such as are within the responsibility of the respondent Party.

13. In conclusion, the impugned acts do not come within the responsibility of the respondent Party and are therefore outside the competence of the Chamber under Article II and VIII(I) of Annex 6 to the General Framework Agreement. It follows that the application is incompatible *ratione personae* with the provisions of the Agreement and must be rejected, in accordance with Article VIII(2)(c) of the Agreement.

V. CONCLUSION

14. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel