DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 8 JULY 1999

CASE No. CH/97/67

Sakib ZAHIROVIĆ

against

**BOSNIA AND HERZEGOVINA AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 10 June 1999 with the following members present:

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

Mr. Leif BERG, 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) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

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I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He worked for approximately 30 years for the "Livno-Bus Company" in Livno, Canton 10 of the Federation of Bosnia and Herzegovina ("the Federation"). At the time of the Bosniak-Croat conflict in the area of Livno, namely in July 1993, he was not allowed to come to work anymore but was put on a so-called "waiting list" together with 51 other employees of Bosniak origin. For the following years, the company paid a certain compensation to the applicant and the other employees on the waiting list. The company continued to pay contributions for them to the pension and social security funds until January 1994. The payment of the compensation was stopped in June 1997. In July 1997 the applicant and his colleagues initiated an action against the company before the Municipal Court in Livno, requesting to be reinstated and awarded compensation. A pre-hearing was scheduled only in February 1999 and a full hearing in March 1999. The applicant alleges that due to his ethnic origin he was removed from and not allowed back to his job, and that the court proceedings have been stalled for the same reason.

2. The case primarily raises the issue whether the applicant has been discriminated against in the enjoyment of his right to work as well as to just and favourable conditions of work, guaranteed in Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (henceforth "the ICESCR"). The question further arises whether the applicant's right to a hearing before an independent and impartial tribunal as guaranteed in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth "the Convention") has been violated.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced by Mr. Zahirović on 18 September 1997 and registered on 16 October 1997. It was signed by Mr. Zahirović and his named representative, Mr. Sejfudin Mulić, one of the applicant's colleagues on the waiting list of the company. The applicant is also represented by Mr. Mehmed Šator, a lawyer practising in Mostar.

4. The Chamber decided to organise the proceedings in the case by an order issued on 17 April 1998 and to transmit the case to the Federation of Bosnia and Herzegovina as the respondent Party pursuant to Rule 49(3)(b) of the Rules of Procedure. The Chamber received observations on the admissibility and merits of the case (dated 18 and 25 May 1998) as well as observations in reply from the applicant (dated 10 and 20 June 1998). In his observations dated 20 June 1998 the applicant specified his compensation claim.

5. On 17 June and 6 July 1998 the Chamber communicated the observations of the applicant dated 10 and 20 June 1998 to the Federation.

6. On 8 September 1998 the Chamber decided to transmit the application also to the State of Bosnia and Herzegovina as a further respondent Party, for observations on the admissibility and merits pursuant to Rule 49(3)(b) of the Rules of Procedure. The time limit for submitting such observations expired on 8 October 1998 but no observations were received.

7. The Chamber decided on 13 October 1998 to hold a public hearing on the admissibility and merits of the case in December 1998.

8. On 13 October 1998 the Chamber further decided to summon as witnesses the Mayor of Livno, the manager of the Livno-Bus Company and the Municipal Labour Inspector in office at the time of the alleged dismissal of the applicant. Moreover, the Chamber decided to ask for the approval of the relevant international bodies to invite two international witnesses: Mr. José Maria Aranaz, the human rights field officer of the Organization for Security and Cooperation in Europe ("OSCE") in Livno at the time, and a member of the Team M1 of the European Community Monitoring Mission ("ECMM") who wrote various reports of September 1997 relating to the alleged dismissal of the applicant and the other employees. It was further decided to invite the Federation Ombudsmen to participate in the proceedings as *amicus curiae*.

9. On 13 October 1998 the Chamber also decided to request further information and additional

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documents from the Federation, namely the decision of the Municipal Court in Livno of 20 July 1997 rejecting the applicant's civil action against the company; the case docket of the Municipal Court regarding that action; the Livno-Bus Company's by-law as in force at the time the applicant was put on the waiting list, and any subsequent amendments; the statistics of the company regarding the ethnic background of its employees prior to the war, at the time the applicant was put on the waiting list, and nowadays; and information on the legal status of the employees on the waiting list. In order to clarify the imputability of the alleged human rights violations to either or both of the respondent Parties, the Chamber decided to invite them to submit a brief before the hearing. The Federation failed to submit the requested documentation but some of the requested documents were later received from other sources (see below).

10. With a letter dated 27 November 1998, ECMM informed the Chamber that it would not authorize any of its former monitors to give oral testimony at the public hearing. ECMM further submitted that its reports were confidential. ECMM did not respond to the Registrar's later query whether it would be possible to obtain testimony at a hearing *in camera*.

11. On 7 December 1998 Mr. Mulić, who represents the applicant in the proceedings before the Chamber, informed the Chamber that Mr. Šator was also going to represent the applicant at the public hearing. Mr. Mulić further suggested to invite Mr. Fahrudin Huskić, the former director of the Livno-Bus Company (for the period from 1985 to 1992) and Mr. Ale Kamber, a representative in the Parliamentary Assembly of Bosnia and Herzegovina, to appear as witnesses before the Chamber.

12. On 8 December 1998, the International Human Rights Law Group requested to be granted status as *amicus curiae* and announced its intention to submit a brief to that effect on 14 December 1998.

13. On 8 December 1998, the Chamber received a letter from Mr. Šator on behalf of a considerable number of persons allegedly dismissed from the Livno-Bus Company in circumstances similar to those of Mr. Zahirović. Mr. Šator proposed that their cases also be examined at the hearing in the case of Mr. Zahirović. Some of the persons were already on a list previously submitted to the Chamber.

14. The Chamber decided on 14 December 1998 to accept Mr. Šator as the additional representative of Mr. Zahirović. The Chamber further decided to summon Mr. Huskić, as a witness but not to summon Mr. Kamber. It rejected the request to enlarge the number of applicants (see paragraphs 89-90 below). The Chamber also decided not to exclude the public from the public hearing in so far as the reports of the ECMM might be discussed. The Chamber granted the International Human Rights Law Group the right to participate in the proceedings as *amicus curiae* and accepted its brief.

15. On 15 December 1998 the Chamber received written submissions dated 14 December 1998 of the Agents of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina, respectively, and in which they stated their position regarding the admissibility and merits of the case.

16. At the Chamber's public hearing in the Cantonal Court in Sarajevo on 16 December 1998 the applicant appeared in person with his representatives Mr. Semir Lagumdžija (authorised by Mr. Šator) and Mr. Mulić. The respondent Parties were represented by Mr. Jusuf Halilagić for the State of Bosnia and Herzegovina and Ms. Seada Palavrić for the Federation of Bosnia and Herzegovina. The Ombudsmen of the Federation of Bosnia and Herzegovina appeared as *amicus curiae* and were represented by Mr. Midhat Osmančaušević, the Assistant Ombudsman based in Livno. Of the summoned witnesses appeared Mr. Ilija Čečur, manager of the Livno-Bus company, Mr. José Maria Aranaz and Mr. Mate Franjičević, former Mayor of Livno. Ms. Dragica Jozić, Municipal Labour Inspector of Livno, and Mr. Huskić did not appear at the hearing; Ms. Jozić sent a medical certificate in excuse.

17. On 18 December 1998, the Chamber considered an offer by the Agent of the Federation of Bosnia and Herzegovina for a friendly settlement of the dispute and decided to give both respondent Parties an opportunity to submit concrete proposals for such a settlement before 8 January 1999.

18. On 8 January 1999, the Chamber received observations of the Agent of Bosnia and

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Herzegovina maintaining his Government's position in the written submission dated 14 December 1998 and as made at the public hearing. The State submitted it was prepared to accept a friendly settlement of the dispute between the applicant and the Federation of Bosnia and Herzegovina.

19. On 8 January 1999 the Agent of the Federation of Bosnia and Herzegovina informed the Chamber that after her visit to Livno and a conversation with the representatives of the Livno-Bus Company, she had received a letter of the company's director confirming that the applicant could return to work.

20. On 11 January 1999, the Chamber received a letter from Assistant Ombudsman Osmančaušević, proposing that the Chamber consider the case also in relation to the 51 employees in the same position as the applicant.

21. On 12 January 1999 Mr. Osmančaušević forwarded a statement of the applicant to the effect that he had refused the company's offer to go back to work as a doorman or car mechanic.

22. On 23 April 1999 the Registry of the Chamber requested the parties to submit certain additional information, *inter alia* as to whether the Livno Municipal Court had delivered judgment in the applicant's civil case against the company.

23. The applicant's representative Mr. Šator replied on 29 April 1999, stating *inter alia* that the Livno Municipal Court had not yet rendered a judgment but that he expected this to be done in the very near future. This information was confirmed in another letter to the Chamber by Mr. Šator dated 3 June 1999.

24. The Agent of the Federation and the Institution of the Ombudsmen of the Federation replied by letters dated 30 April and 24 May 1999.

25. The Chamber deliberated on the admissibility and merits of the case on 13 January, on 15 and 16 April, on 12 May, and on 9 and 10 June 1999.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

26. The facts of the case can be summarised as follows: The applicant, who is of Bosniak origin, was an employee of the Livno-Bus Company, initially a socially-owned company, for approximately 30 years. On 21 July 1993, the applicant and 51 other employees of Bosniak origin were sent home and put on a so-called "waiting list". Thereafter they received compensation of 80 German Marks (DEM) per month instead of their salaries. The company continued to pay contributions based on this amount to the pension and social security fund until January 1994.

27. In the meantime about 40 persons of Croat origin - some of them in order to fulfil their service duties during the war, some because they were not fit to fight in the hostilities - joined the company to perform the work of those employees who had been placed on the waiting list. In April 1996 the Livno-Bus Company placed a vacancy announcement on a notice board on its premises. Following this announcement, the company concluded formal employment contracts with the aforementioned roughly 40 persons who had joined the company during the war. The applicant and his Bosniak colleagues remained on the waiting list and continued to receive the compensation of 80 DEM per month until and including June 1997. On 10 July 1997 they found out that the company had stopped to pay the compensation. No formal decision or reason for the discontinuation of the payments was communicated to them.

28. On 17 July 1997, the applicant, together with other employees, submitted to the Governing Board of the Livno-Bus Company a request to be reinstated, to be awarded compensation for lost income and to have the outstanding labour relation contributions paid for them. There was no response.

29. The applicant and other Bosniaks on the waiting list further requested, by a civil action filed

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with the Municipal Court of Livno on 20 July 1997, to be reinstated and compensated for their financial losses. On 29 December 1997, the Municipal Court, without having held a hearing, issued a procedural decision rejecting this complaint as incomplete with respect to the names and addresses of the plaintiffs, the indication of the value of the dispute, the presentation of evidence and the representation of the plaintiffs.

30. Thereafter, apparently in January 1998 (date not specified), the applicant's representative Mr. Šator, filed a new action with the Livno Municipal Court on behalf of the applicant and the 51 other Bosniaks on the Livno-Bus Company's waiting list, in accordance with the requirements set out by the Court in its decision of 29 December 1997. According to Mr. Šator, he initiated between January and November 1998 approximately 390 civil actions in the Municipal Courts in Livno and Tomislavgrad concerning several companies' termination of labour relations allegedly because of the ethnic background of the relevant employees and requesting the employees' reinstatement.

31. On 3 March 1998, on the basis of a contract between the Livno-Bus Company and the Privatization Agency of Livno, private capital was invested into the company by the manager of the company and other private persons (see paragraphs 44-45 and 59 below).

32. The applicant was invited to the Livno-Bus Company on 8 January 1999, where he was offered work as a doorman or mechanic. However, in view of the fact that he was not offered his previous position as a driver the applicant rejected the offer.

33. On 11 February 1999 the Municipal Court in Livno held a preparatory hearing in the civil case of the applicant against the Livno-Bus Company. The Court passed a procedural decision scheduling the main hearing for 11 March 1999. The applicant's representative was ordered to complete his action further.

34. In the main hearing before the Municipal Court on 11 March 1999 the applicant's representative submitted a more precise motion requesting the Court to find it "established that the employment of the (applicant) (had) not been terminated. The defendant ... should further be obliged, in accordance with its internal regulations (and) under the threat of execution, to allow the return of the (applicant) to (his) work place, taking account of his skills and educational background, within 15 days from the date when the judgment becomes valid." The representative of the defendant accepted the first part of the request. The parties agreed on the fact that the payment of the 80 DEM compensation per month ceased in July 1997 due to an unwritten decision of the manager. The public hearing was closed after the presentation of evidence and the final pleadings. According to the information available to the Chamber, no judgment has yet been delivered.

B. Particular written evidence

1. OSCE Reports

35. The Organization for Security and Cooperation in Europe issues reports on the human rights situation in the field as part of their human rights mission to Bosnia and Herzegovina. The human rights field officer based in Livno at the time of the cessation of payment of the compensation to the applicant, Mr. Aranaz, reported regularly on the situation of the applicant and the other employees. In one of his reports it is stated that only workers of Bosniak origin were treated in this way and that no members of the Croat (majority) population in the Livno area were placed on such waiting lists nor were they dismissed.

36. A report of 21 August 1997 outlines that the workers concerned had no other sources of income and that they feared that returnees to Livno could take their jobs. It is further reported that the Center for Social Welfare in the area refused to give any economic aid to the applicant and his colleagues on the waiting list. Referring to court proceedings the report stated that the judiciary in Canton 10 was not operative since its members had not been officially appointed. Other correspondence between the human rights officer in Livno and the OSCE Headquarters Sarajevo that was made available to the Chamber show that employment discrimination in the Livno area was of major concern to the OSCE Human Rights Mission.

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37. According to a letter by Mr. Aranaz to the Chamber dated 26 March 1998, the only four employees of Bosniak origin who are still working at the Livno-Bus Company are married to women of Croat origin. The company's manager had told Mr. Aranaz that he would not employ any more workers of Bosniak origin after what had happened during the Bosniak-Croat conflict. The letter cites the director and the lawyer of the company as having said that the company was transporting displaced persons of Croat origin and Croat soldiers and that it would not be correct to provide such services with Muslim drivers and conductors. Mr. Aranaz further stated that one of the judges had told him unofficially that the judges had received instructions from the Governor of the Canton to the effect that no hearings should be scheduled in cases in which a Bosniak Muslim was the plaintiff. According to Mr. Aranaz' sources in the Court, if hearings involving plaintiffs of Bosniak origin were scheduled, "this was just a way to cover (things) up and to get rid of the pressure from the international community."

38. Mr. Aranaz further stated in a letter of 14 November 1997 addressed to the Chamber that to his knowledge the Livno-Bus Company was state-owned and that the Canton received its profits. He confirmed that the manager of the company was refusing to meet with the employees on the waiting list. Mr. Aranaz had communicated the case to the Federal Ombudsmen Office in Livno on 28 August 1997. One of the Assistant Ombudsmen had said that probably the employees on the waiting list had been dismissed because of the bad economic situation of the Livno-Bus Company. However, the Mayor of Livno had pointed out to Mr. Aranaz that the Livno-Bus Company was the most profitable company in the whole of Canton 10. The letter further stated that the local courts were not able to provide proper protection as they were politically controlled by the HDZ, the Croatian Democratic Party.

2. Reports of the European Community Monitoring Mission

39. Team M1 of ECMM covered the situation of the Livno-Bus Company's employees on the waiting list in its regular reports of 5, 9, 16 and 23 September 1997. It issued a special report dated 24 September 1997 on this subject. The reports restate some of the above-mentioned OSCE information and concluded that the dismissals seemed both discriminatory, since only employees of Bosniak origin were affected, and illegal because there were no formal letters terminating the working relations. The reports further state that the judicial system in Canton 10 was not operative and that a petition to the Federation Ombudsmen had not resulted in any improvement of the situation.

40. The Team received visits of the workers on several occasions. On one occasion the employees said they thought the manager of the company was receiving instructions from the political level. They suspected the then Governor of the Canton of giving orders to the manager in respect of the Bosniak employees. They further told the Team about their difficulties in trying to schedule appointments with both the Governor and the manager of the company.

41. The ECMM Team reportedly met Mr. Franjičević, the then Mayor of Livno, and asked him for his opinion on the situation of the workers of Bosniak origin. Mayor Franjičević had said he was aware of the problem, and had had a meeting with the manager of the Livno-Bus Company, Mr. Čečura. Mayor Franjičević reported to the ECMM Team that manager Čečura had justified the cessation of the payment of compensation for the placement on the waiting list by explaining that the aim of the company was to be profitable and that it therefore was not possible to pay indefinitely the salaries of workers who were not performing any work. According to Mayor Franjičević, manager Čečura had further told him that because of the new ethnic composition of the population of Canton 10, the number of workers of Bosniak origin in the company should be reduced to 9% so as to reflect that change. Manager Čečura was also cited as having said that "in order to avoid problems" Bosniak employees should not work as drivers but in the workshop.

42. The ECMM Team also met one of the Assistant Ombudsmen of the Federation based in Canton 10 who had referred to a Directive of the Federal Labour Inspector in the Ministry of Social Policy, Refugees and Displaced Persons issued on 13 January 1997. This Directive was addressed to all municipal labour inspectors (see paragraph 78 below). The Assistant Ombudsman had told the ECMM Team that, in the Livno area, the Livno-Bus Company was one of the last enterprises to keep a waiting list. The public enterprise for post, telephone and telegraphic services ("PTT") also had a waiting list, but was paying its employees 35 % of their former salaries as stipulated by law.

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43. The ECMM Team had then met with the Livno Labour Inspector, Ms. Jozić, who had explained the economic background of the waiting lists: During communism state companies had employed more workers than necessary and those had become a heavy burden. However, she had said she knew very little about the case of the workers of the Livno-Bus Company because it had not been reported to her. She had recently received a document from the Federal Labour Inspector, mentioning some irregularities concerning human rights and working relations in the Livno Municipality. Ms. Jozić had said she was astonished about this situation as she had thought that the job market in Livno was much better than in other municipalities. She had indicated that she was unaware of the above-mentioned Federal Directive of 13 January 1997 (see paragraphs 42 above and 78 below).

C. Oral testimony

1. Mr. Ilija Čečura (witness)

44. Mr. Ilija Čečura was appointed manager of the Livno-Bus company on 12 April 1992 by the then municipal authorities in Livno. Regarding the property status of the company, the witness confirmed that the formally socially-owned company had been "state-owned" at the time when he was appointed. The witness was not able to give a precise answer to the question whether "state-owned" now meant ownership at the level of the State or the Federation of Bosnia and Herzegovina. The planned privatization has not yet taken place, that is to say the state capital has not been sold in form of shares. However, on 3 March 1998, on the basis of a contract with the Privatization Agency of Livno, private capital was invested into the company by the witness himself and other persons, which he referred to as "additional capitalisation".

45. As to the ownership at the time of the Chamber's hearing, the witness made different statements: he first asserted that the company had a mixed ownership with mainly private (66 %) and partly state-owned (33 %) capital. He then stated that he and another person now owned the company to 12 or 13 % and that the rest was state-owned. Later he said that his own share of the company amounted to 12 or 13 % of the private capital invested.

46. With respect to the management of the company, the witness explained that on the Managing Board, consisting of five members of Croat origin, two were appointed by the Cantonal Agency for Privatization i.e. the Cantonal Ministry for Economy, and the other three by the private shareholders.

47. The witness stated that the company was presently employing 126 employees. Before the war it had about 280 employees. 115 of the current 126 employees were of Croat, and 11 of Bosniak origin. Before the war - despite the fact that the majority of the population in Livno was of Croat origin - there were 86 employees of Croat and 194 of other (Bosniak and Serb) origin. The witness confirmed that additional employees of Croat origin had worked for the company during the war.

48. Regarding the employment status of the applicant, the witness confirmed that the applicant was still on the waiting list. His employment relation had not been terminated, and there was not any written document or oral instruction in that sense. The witness confirmed that he was the manager of the company when the decision was taken to place the 52 employees of Bosniak origin on the waiting list in July 1993, at the time when the Croat-Bosniak hostilities broke out. The witness was not clear about whether he himself had taken the decision or not; he said he might have been on duty travel at the time. He underlined that this decision was taken for the personal safety of the employees. The decision was posted on a notice board on the company premises but individual procedural decisions were not issued because of the war circumstances and the impossibility to deliver such decisions to the workers concerned.

49. As for the cessation of the payment of contributions for the employees (contributions to the pension fund, for invalidity and health insurance) on 1 January 1994, the witness said this was due to the bad economic situation of the company. The payment of the 80 DEM compensation was stopped in July 1997 for the same reason. He explained that this compensation constituted a compromise between the financial capability of the company and the subsistence needs of the workers on the waiting list.

50. Regarding the persons who worked for the company during the war, the witness explained that

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after placing the 52 Bosniak employees on the waiting list, there was a need to fill their posts in order to be able to maintain the passenger service. As the employees of Bosniak origin - mainly drivers - were no longer safe in view of the specific activities of the company (transportation of, amongst others, soldiers of the Croatian Defence Council HVO, refugees and expelled Croats) persons of Croat origin took over this work. According to the witness, the company could have lost passengers, if they had kept Bosniak drivers. He underlined that a number of Bosniak employees continued to work on other assignments within the company's premises.

51. The witness confirmed that, in 1996, a vacancy announcement was posted on the company's notice board. This was done not in order to hire new employees but so as to enable the company to legalise the work relation of the persons who had joined the company during the war. In view of the overall aggressive environment and threats it was practically impossible for the company to dismiss those workers after the war. The witness testified that there were no workers of Croat origin on the waiting list. He further said that the company was deteriorating financially and that according to an evaluation of the company, it had 28 employees more than currently needed for the available work. The drivers, he said, now earn 500 DEM or more per month.

52. The witness further submitted that if the company would prosper economically there would be a chance for the workers of Bosniak origin on the waiting list to return to work. He said that, for example, for running the new bus connection Livno-Sarajevo, a driver of Bosniak origin had been able to return to work. He also said that attempts had been made to enable a return of the applicant, who had worked 2-3 days on bus repairs, but that he was then placed back on the waiting list because of the protests of other employees working in the company.

2. Mr. José Maria Aranaz (witness)

53. Mr. José Maria Aranaz worked as OSCE Human Rights Field Officer in Livno from October 1996 until March 1998. He had first been approached by the Bosniak employees of the Livno-Bus Company, including the applicant around 21 July 1997.

54. The witness said that immediately after learning about the problem, he had contacted the manager of the Livno-Bus Company and asked for a meeting with him. At a meeting with manager Čečura on 28 August 1997 the witness had asked him to explain the status of the 52 workers on the waiting list, e.g. whether they were still employed or whether they had been dismissed. Manager Čečura had stated that the company had not terminated their employment, but had stopped to pay them compensation because of its difficult financial situation due to the termination of many of its bus lines and the four-year payment of compensation to those on the waiting list. The witness said Mr. Čečura had also told him that the company had employed drivers of Croat origin because the passengers would have reacted very badly to being driven by Bosniaks. Thus, the company had tried to match its drivers' nationality to that of its passengers.

55. With respect to the question whether he believed that the ethnic origin was the reason for removing certain workers from their posts, putting them on the waiting list and not returning them to work after the end of the war, the witness said that the answer he had received from manager Čečura in their meeting in 1997 was not precise because the manager had linked the question of the ethnic origin of the workers with the economic situation of the company. However, the witness mentioned that when he came to Livno after the war, he had learned that Livno-Bus was the most profitable company within Canton 10.

56. The witness stated that from 1993 onwards the Livno-Bus Company had employed workers of Croat origin to 50 vacant positions. About six employees of Bosniak origin had remained in their posts.

57. Regarding the court proceedings that the applicant had initiated, the witness explained that he had also talked to some local judges in Livno about the case brought by the workers on the waiting list, and that he had learned informally that the judges had received instructions from the Cantonal Government not to consider cases involving plaintiffs of Bosniak or Serb origin. He stated that he had been told by contact persons in Livno that the judges at the Municipal Court were trying to cover up their inefficiency by scheduling hearings in these cases, but that in fact the cases were never

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resolved.

58. The witness further pointed out that the Office of the Federal Ombudsmen in Livno had received 5,087 applications involving alleged violations of human rights, and that 93 % of these involved complaints about the violation of the right to work, brought by persons belonging to the Bosniak population in the area of responsibility of the Ombudsmen's Livno office. The witness said he had gained the impression that employment discrimination because of ethnic origin was widely spread in the area of Livno. Also, many persons with an ethnic minority background had problems realizing their claims to pensions, health insurance or social security. The legal protection provided by regular courts was completely unsatisfactory and there was a risk of impunity in cases involving violations of workers' rights.

3. Mr. Mato Franjičević (witness)

59. Mr. Mato Franjičević was the Mayor of Livno from September 1995 until October 1997. Since April 1998, he is the Deputy President of the Cantonal Government. In addition to this, from 1995 until the contract on the "additional capitalisation" of the Livno-Bus Company was concluded in March 1998, he was member of the Managing Board of the company. The witness was not able to clarify whether "state-owned company" now meant ownership at the level of the State or the Federation of Bosnia and Herzegovina.

60. The witness stated that manager Čečura was most probably appointed to his position in 1992 by the War Presidency of the Livno Municipality. While the witness was Mayor of Livno, he had direct control over all municipal public companies. This did not apply to the Livno-Bus Company as, at the time, it was a socially-owned and thus state-owned company.

61. The witness was asked by the Chamber to comment on a letter dated 29 September 1997 that he had sent to Mr. Jackson, a Major of the Livno Civil-Military Information Centre of the Stabilisation Force's Multi-National Division South West, in reply to an enquiry about the termination of employment contracts with workers of so-called minority populations, including the 52 workers of the Livno-Bus Company placed on the waiting list in 1993. The witness had stated in the letter that the last-mentioned workers of Bosniak origin would be returned to work gradually, according to the company's needs, that already 12 % of them had returned to work, and that the number of Bosniaks employed in the overall workforce was bigger than their percentage as citizens. The witness commented that with an improvement of the economic conditions, he hoped that all the workers on the waiting list could return.

62. The witness confirmed that in the first half of 1996, there was a public vacancy announcement intended to formally regularise the employment status of the persons who performed work for the Company during the war, namely in 1992 and 1993. He said such employment involved mainly workers who had been soldiers at the front-line during the war and but had been sent to the company to fulfil their working obligations. During 1997, however, the risk of financial damage to the company because of passengers' negative reactions against drivers of Bosniak origin would have been much smaller than in previous years.

63. In response to a question from the Chamber as to what he undertook in his capacity as Mayor to protect the social rights of workers of Bosniak origin and their families, the witness underlined that, as a Mayor, it was not his primary goal to exercise influence on the work of individual companies, but to contribute to creating circumstances for economic development offering everyone equal opportunities, regardless of their ethnic background or religion. He confirmed that, as a member of the then state-owned Livno-Bus Company's Managing Board he could have influenced the actions of that company but that he was only one out of five members on the Board, all having been appointed by the Agency for Restructuring and Development of the so-called "Republic of Herzeg-Bosna" based in Mostar. Such management boards had a right to appoint and dismiss managers.

64. Asked to comment on the question whether the judges on the Livno Municipal Court might have been instructed not to process cases of plaintiffs of Bosniak origin, the witness said that this was absolutely unknown to him and that he had now heard for the first time that the Governor of the Canton may have given such an instruction.

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D. Oral observations of Mr. Midhad Osmančaušević (representing *amicus curiae*)

65. Mr. Midhad Osmančaušević (hereinafter "*amicus curiae" or "amicus"*) is Assistant Ombudsman of the Federation of Bosnia and Herzegovina and based in Livno. The Ombudsmen's office in Livno is competent for the whole of Canton 10, hence for the municipalities Livno, Kupres, Tomislavgrad, Drvar, Bosansko Grahovo and Glamoc. There are around 700 cases pending which the Office considers might involve a violation of the right to work, mainly cases in which the applicants are Bosniaks. Mostly the alleged violations occurred during 1993, right after the Croat-Bosniak hostilities.

66. *Amicus* confirmed that the applicant and the other concerned persons were placed on the waiting list of the Livno-Bus Company and thus sent away from their work place. While some companies had issued procedural decisions to that effect, with information on the rights of the employees and their legal remedies, many - including the Livno-Bus Company - did not give any decisions to those workers. The workers of this company were placed on the waiting list after 21 July 1993. The cessation of the 80 DEM per month compensation paid until July 1997 was unilaterally decided by manager Čečura.

67. *Amicus* reported that a group of workers of the company contacted the Ombudsmen's Livno Office on 10 July 1997 to ask for the protection of their right to work and other related rights. The Office found violations of Articles 6, 8 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention. Regarding the court proceedings the workers initiated, *amicus* reported on a conversation between him and the competent judge of the Livno Municipal Court on the question why the hearing in that case - just as in some 400 other similar cases before the courts in Livno and Tomislavgrad - had not been scheduled. The judge had stated that the courts were waiting for adequate legislation to be adopted which would regulate that issue in the best way.

68. *Amicus* submitted to the Chamber a list of all employees of the Livno-Bus Company of 1 January 1990, which he had received from the Federal Labour Inspector and where all workers (including the 52 employees of Bosniak origin later placed on the waiting list) are listed with their personal numbers and date of birth. *Amicus* reported that on the list produced by the company in the procedure before the Ombudmen's Office, the group of 52 employees of Bosniak origin no longer appeared on this 1990 list of all employees, which he considered to amount to a violation of the general non-discrimination principle as contained in Article 14 of the Convention.

E. Amicus brief of the International Human Rights Law Group dated 14 December 1998

69. The International Human Rights Law Group (hereinafter "*amicus*") submits that the alleged dismissal of the applicant, the ceased payment of various contributions and later also of compensation, and the impossibility for him to achieve protection through the authorities or the courts constitute violations of Articles 6, 8 and 14 of the Convention, Article 1 of its Protocol No. 1, Articles 2 and 6 of the ICESCR, Articles 1, 2, and 5(e) of the Convention on the Elimination Of All Forms of Racial Discrimination ("CERD") as well as of Article 26 of the International Covenant on Civil and Political Rights ("the Covenant").

70. *Amicus* suggests that the fact that the applicant and his colleagues are all members of one ethnic or national group and were replaced by individuals of a different ethnic group would seem to indicate that distinctions were made and actions taken on discriminatory grounds, thereby violating Articles 2 and 6 of the ICESCR. *Amicus* observes that Articles 1(1), 2(1)(a) and 5(e)(1) of the CERD create State responsibility for the actions of the Livno-Bus Company. Further, Article 26 of the Covenant was violated as the distinction between the applicant and the workers of a different ethnic origin was not based on "reasonable and objective criteria" and thus constituted discrimination.

71. As to the payment of contributions and compensation, *amicus* asserts that once they had been placed on the waiting list, the applicant and his Bosniak colleagues had a legitimate expectation to continue receiving those payments or to be reinstated in their positions with all accessory rights. *Amicus* notes that the Human Rights Ombudsperson for Bosnia and Herzegovina has recognized that

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an alleged ethnically motivated dismissal from work might fall within the scope of Article 1 of Protocol 1 to the Convention in relation to the financial impact on the applicant of the loss of his employment (c.f. the Ombudsperson's Decision to Open Investigation of 27 May 1997 concerning Application No. 351/97 by *Devleta Sarić against The Federation of Bosnia and Herzegovina*).

72. *Amicus* further suggests that the fact that no oral hearing was scheduled by the Municipal Court since the applicant filed suit in July 1997 shows that he was deprived of his right of access to court and to a fair procedure.

F. Relevant domestic law

73. The Law on Working Relations with Special Provisions for War Circumstances was published in the Official Gazette ("*Službeni List"*, henceforth "OG") of the Republic of Bosnia and Herzegovina ("RBiH)" no. 21/92 of 23 November 1992. It was passed during the state of war as a Decree with force of law, and was later confirmed by the Assembly of the RBiH together with several other war decrees (OG RBiH, no. 13/94 of 9 June 1994).

74. Article 7 paragraph 1 of this Law provided that an employee could be put on a waiting list if the need for his/her work had temporarily ceased to exist because the workload had been reduced during the state of war or in case of a direct threat of war, and at the longest until these circumstances cease to exist. An employee put on the waiting list was entitled to pecuniary compensation. The exact amount was to be defined by the management, i.e. the employer, in accordance with the financial situation of the employer (Article 7 paragraph 2). The contributions for the health insurance and the retirement and disability insurance were calculated on the basis of the aforementioned pecuniary compensation (Article 7 paragraph 3). The obligation to pay such contributions remained on the employer (Article 7 paragraph 4).

75. Article 5 of the Municipal Decision on the Manner of Implementing and Executing the Working Duty in the Livno Area issued on 2 June 1992 provided that employees could be exempted from their working duty if their residence was located close to an area of war activities; in order to prevent defeatism, subversive activities and on other precautionary grounds; and in other cases where deemed necessary. Article 6 of this Decision stipulated that in such cases a procedural decision was to be issued by the manager of the organization or the employer, and that the employee was to be exempted from the working duty until the cessation of the circumstances which had caused the exemption.

76. The Presidency of the RBiH declared the cessation of the state of war in Bosnia and Herzegovina on 22 December 1995 (see OG RBiH, no. 50/95). The decision was published on the Bulletin Board of the Presidency of the RBiH in Sarajevo and entered into force on that same day. The relevant issue of the Official Gazette comprising this decision was distributed on 5 January 1996. The state of direct or immediate threat of war was declared to have ceased on the territory of the Federation of Bosnia and Herzegovina ("FBiH") by a decision of 23 December 1996 of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina (published in the Federation's Official Gazette *"Službeni Novine*", no. 25/96). The Law on Working Relations (see paragraphs 73-74 above) provided that with the cessation of war circumstances, employees could no longer be kept on a waiting list (Article 7 paragraph 1).

77. Working relations are presently governed by the laws adopted before the war, i.e. by the Law on Fundamental Rights in Working Relations of the Socialist Federal Republic of Yugoslavia ("SFRY") (OG SFRY, nos. 60/89 and 42/90) - as taken over by a Decree with force of law of 11 April 1992 (OG RBiH, no. 2/92) and confirmed by the Assembly of the RBiH together with other war decrees on 9 June 1994 (OG RBiH, no. 13/94) - and by the former Socialist Republic Law on Working Relations (OG of the Socialist Republic of Bosnia and Herzegovina, no. 20/90), as applicable in accordance with the provision on the continuation of laws as contained in Article 2 of Annex II to the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina). These provisions are applicable to working relations as long as they are not replaced by new legislation. A proposed law on employment relations that ought to regulate the labour rights and legal status of the employees on the waiting lists is presently pending before the Parliamentary Assembly of the Federation. The old legal provisions do not as such govern the status of workers on

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waiting lists but spell out the rights of employees whose services are no longer required, for example, due to technological or other advancement contributing to the increase of productivity and improving the success of the employer.

78. A Directive of 13 January 1997 (not published in the Official Gazette) issued by the Federal Inspector of Work of the Ministry of Social Policy, Refugees and Displaced Persons informed all municipal labour inspectors of the ceased application of the war-time Law on Working Relations. The Directive sets out that due to the end of the war, the waiting lists shall disappear and the workers shall thereafter be designated as "workers waiting for work". The companies have no right to dismiss such workers but must pay them a monthly salary consisting of the average of their three last salaries. If the company is unable to do so and if the worker's services will not be needed anymore due technical progress (see the conditions of the pre-war legislation as outlined above), the company should give them an official notification in order to allow them to approach the Bureau of Employment which will grant them an allowance for a fixed period. The Directive places responsibility on the municipal labour inspectors to monitor the companies in order to avoid abuse of the new legal situation, and obliges the inspectors to act upon this Directive. A procedure is available to sanction companies that do not follow the law.

79. According to Article III(3) of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace), all governmental functions and powers which are not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities. The functions and powers conferred to Bosnia and Herzegovina are listed exhaustively in Article III(1) of the Constitution. Employment matters are not contained in this list and therefore fall within in the competence of the Entities. Article III(3) further states that Entities and any sub-divisions thereof shall comply fully with the Constitution.

IV. COMPLAINTS

80. The applicant complains that due to his Bosniak origin there has been a violation both of his right to respect for his private life under Article 8 of the Convention and of his right to work, and that he has been denied his right to a fair hearing within a reasonable time before an independent and impartial tribunal as prescribed by Article 6 of the Convention. He further alleges that he has been deprived of work-related compensation and contributions.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Parties

1. Bosnia and Herzegovina

81. The State of Bosnia and Herzegovina points out that it was not indicated as a respondent Party by the applicant. As the applicant is entitled to dispose of his application by determining the appropriate respondent Party, and as he is represented by a lawyer, the Chamber cannot extend the application by considering it to be directed also against the State. In any case, the State was not aware of the events complained of, and thus had no possibility to influence or control them.

2. The Federation of Bosnia and Herzegovina

82. As to the admissibility of the case, the Federation does not submit any objections and holds that the exhaustion of local remedies has been made impossible for the applicant by the behaviour of the Livno-Bus Company, the Livno Municipal Court and the Cantonal Court. Concerning the responsibility of the Federation for the acts and omissions of the authorities of Canton 10, the Agent states that co-operation of the Canton's organs with the organs of the Federation has been difficult, and in some cases non-existent. Accordingly, the Federation cannot take responsibility for any compliance or non-compliance of the local organs in question in the present case.

83. As for the merits of the case, the Federation stresses, on the one hand, that the act of placing the applicant and the other employees of Bosniak origin on the waiting list was justified by

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Article 5 of the Municipal Decision on the Way of Implementing and Executing the Working Duty in the Livno area issued on 2 June 1992, for their personal safety and for other security reasons, and because of the reduced transportation demand due to the war. On the other hand, the Federation concedes that it was not correct of the Livno-Bus Company not to give written decisions to the applicant and the other employees with respect to their placement on the waiting list.

84. The Federation submits that, while it was acceptable for the company to place a group of employees, among them the applicant, on the waiting list due to the poor market demand caused by the war activities, it was clearly not acceptable to employ new workers as long as the applicant and others remained on the waiting list. The company should instead have called those on the waiting list back to work if it needed workers for those posts. In no circumstances could the employees on the waiting list have applied for the "vacant positions" in April 1996 because at that time they still enjoyed a working relation with the company.

85. The Federation's Agent further stated at the oral hearing that although she should defend the Livno Municipal Court's actions, she could not accept that the court had not even once summoned the parties to a hearing a year after a correct action was submitted. She further stated that she would leave it for the Chamber to judge whether actions undertaken by Livno-Bus Company and the courts of Canton 10 have led to a violation of Article 6 of the Convention.

B. The applicant

86. The applicant submits that the Chamber's hearing proved the flagrant violation of the right to work in the case of the 52 employees of Bosniak origin on the waiting list of the Livno-Bus Company. He stressed that he was not interested in politics, but only wanted to work in order to survive and to support his family. He said it was hard to be out of work after 32 or 33 years with the same company and asked the Chamber to take account of the economic hardship suffered by himself and his colleagues of the same ethnic origin, this amounting to a serious humanitarian situation.

C. *Amicus curiae* (The Federation Ombudsmen)

87. The Federation Ombudsmen suggest that the application should be successful, namely that the applicant and his colleagues in a similar situation should be able to go back to work, to get compensation, and to be provided with shares of the company capital.

VI. OPINION OF THE CHAMBER

A. Admissibility

88. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII of the Agreement.

1. The scope of the case

89. The Chamber notes that the present application was signed by Mr. Zahirović and one of his representatives, Mr. Mulić. One of the attachments listed 50 workers on the Livno-Bus Company's waiting list, including Mr. Zahirović and Mr. Mulić. Although referring to the similar circumstances which his Bosniak colleagues in the company were facing and continue to face, Mr. Zahirović did not submit, at the outset, a joint application including also those persons. The application did not include any powers-of-attorney authorising the applicant's representative to act in the name of others on the waiting list. Nor did Mr. Mulić indicate that he himself also appeared as an applicant. In his comments of 10 June 1998 in reply to the Federation's observations of 18 and 25 May 1998 the applicant, by then also represented by a lawyer, did not object to the Chamber's understanding that the application was his alone. Even the applicant's lawyer's observations of 8 December 1998, when the written proceedings preceding the hearing had come to a close, did not show that he had been duly authorised to appear before the Chamber in the name of any of the other Bosniaks on the waiting list.

90. In these circumstances the Chamber will examine the present application only in so far as it

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has been lodged in the name of applicant Zahirović alone.

2. Competence *ratione personae*

91. The Chamber has jurisdiction for applications directed against the Parties of the Agreement, namely Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska. This jurisdiction, as contained in Article II of the Agreement, extends to violations of the rights and freedoms provided for in the relevant international agreements, where such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities or any individual acting under authority of such an official or organ.

92. The Chamber also recalls the undertaking of the Parties to the Agreement to secure the rights and freedoms mentioned in the Agreement to all persons within their jurisdiction. This undertaking not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to ensure and protect those rights (see *Matanović* v. *The Republika Srpska,* Case No. CH/96/1, decision on the merits of 6 August 1997, Decisions 1996-97, paragraph 56, and *Marčeta v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/41, decision of 3 April 1998, Decisions and Reports 1998, paragraph 65).

(a) Bosnia and Herzegovina

93. Bosnia and Herzegovina has argued that it cannot be considered a respondent Party in this case. It is true that the applicant submitted his application against the Federation as the only respondent Party. In its observations of 18 May 1998 the Federation, however, argued that Bosnia and Herzegovina was solely responsible for the actions of the Livno-Bus Company as it had been a state-owned company. As recalled above (see paragraph 91), the Chamber's jurisdiction extends to alleged or *apparent* violations of the rights and freedoms provided for in the relevant international agreements appended to the Agreement, *inter alia,* where such a violation is alleged *or appears* to have been committed by one or several of the Parties to the Agreement. The Chamber notes the complexity of the legal and constitutional arrangements of Bosnia and Herzegovina because of which it would be unreasonable to expect applicants to be able in all circumstances to address the correct respondent Party. This approach is in line with the object and purpose of the right of individual petition provided by the Agreement.

94. It is on the above basis that the Chamber has consistently considered that it is not restricted by the applicant's choice of respondent Party. In its case law the Chamber has repeatedly found violations of the Agreement to have been committed by a respondent Party designated by the Chamber itself (see, e.g., *Turčinović v. Bosnia and Herzegovnia and The Federation of Bosnia and Herzegovina,* Case No. CH/96/31, decision of 9 May 1997, Decisions 1996-97, paragraph 11). On the basis of its competence under the Agreement the Chamber has further provided, in Rule 33(1) of its Rules of Procedure, that it may, *proprio motu*, take any action which it considers expedient or necessary for the proper performance of its duties under the Agreement. In the present case the Chamber eventually decided to transmit the application not only to the Federation but also to the State of Bosnia and Herzegovina for observations, thereby affording it an opportunity to take part in adversarial proceedings.

95. The Chamber therefore rejects the argument of Bosnia and Herzegovina that it is precluded from examining, for the purposes of the Agreement, the potential responsibility of Bosnia and Herzegovina for the events complained of.

96. The Chamber finds, however, in light of all observations and evidence now before it, that in the present case there are effectively no grounds for imputing responsibility for any of the alleged or apparent violations to Bosnia and Herzegovina. The Chamber finds it established that contrary to the allegation of the Federation, the formally "socially-owned" property became - despite the possibly wrong denomination - "state-owned" at the level of the Entities. Therefore, no responsibility for the impugned acts can be attached to the State of Bosnia and Herzegovina because of ownership. Nor does there seem to be any possibility for the organs of Bosnia and Herzegovina to exercise control over the actions of the Livno-Bus Company. Thus, it appears impossible to attribute any of the company's actions or omissions to this respondent Party.

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97. Furthermore, as for any actions or omissions for which administrative or judicial bodies might be held responsible, the Chamber notes that working relations and judicial institutions are not amongst the matters listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace) as falling within the responsibility of institutions of the State. Accordingly, they fall within the responsibility of the Entities by virtue of Article III(3) of the Constitution. The Federation is therefore solely responsible for both the contents and application of the legislation in force within its territory concerning the subject matter of the applicant's complaints.

98. It follows that the application cannot be considered to raise matters attracting the responsibility of Bosnia and Herzegovina for the purpose of the Agreement.

(b) The Federation of Bosnia and Herzegovina

99. The Chamber will next examine the Federation's argument that it cannot be held responsible for the matters complained of as it was not in control of the acts of the Livno-Bus Company. There is no evidence that the Federation explicitly instructed the company to take any of the decisions of which the applicant is complaining.

100. However, in light of the witness evidence, it appears indisputable that the formerly "socially-owned" Livno-Bus Company was wholly "state-owned" at least from the time when the impugned acts in question occurred until private capital was invested in the company in March 1998. During that period the company was under the control of a Managing Board composed of five members who were all appointed by "the Agency for Restructuring and Development of the Republic of Herzeg-Bosna". Such management boards, of which one member was the former Mayor of Livno, had the right to appoint and dismiss managers who were and are, *inter alia*, responsible for staffing decisions. From these facts it is clear to the Chamber that public bodies for which the Federation is responsible had a direct influence on any acts and omissions of the company. Therefore, the impugned acts and omissions occurring during this period are attributable to the Federation for the purposes of the Agreement.

101. With reference to Article II of the Agreement (see paragraph 91 above), the Chamber also rejects the Federation's argument that it could not exercise control over Canton 10 and the Municipality of Livno. It follows from the obligations which the Federation has assumed under Article II that it has to take, for the purposes of securing the rights under the Agreement, all necessary steps to gain and exert effective control over all forms and levels of public authority exercised within its jurisdiction. A mere submission that the Federation is unable to influence authorities of a certain Canton or municipality cannot serve as an excuse to evade responsibility under the Agreement.

102. Additionally, and irrespective of the recent injection of private capital into the Livno-Bus Company, the Chamber recalls the Parties' positive obligation under Article I of the Agreement to secure the rights guaranteed therein. Such protection through the executive and judicial branch falls within the responsibilities of the Federation as one of the Entities of Bosnia and Herzegovina (see Article III(3) of the Constitution of Bosnia and Herzegovina, paragraph 79 above).

103. For the above reasons, the Chamber rejects the Federation's argument that it cannot be held responsible for the impugned acts in question.

3. Competence *ratione temporis*

104. The Chamber will next address the question to what extent it is competent *ratione temporis* to consider this case, bearing in mind that some of the alleged violations occurred before the entry into force of the Agreement on 14 December 1995. In accordance with generally accepted principles of international law, the Agreement cannot be applied retroactively. It is thus outside the competence of the Chamber *ratione temporis* to decide whether events occurring before the entry into force of the Agreement gave rise to violations of human rights (see, e.g., *Matanović v. The Republika Srpska,* Case No. CH/96/1, decision on the admissibility of 13 September 1996, Decisions 1996-97).

105. Evidence relating to such events may, however, be relevant as a background to events

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occurring after the Agreement entered into force (see, e.g., *Eraković v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/42, decision of 15 January 1999, paragraph 37). Moreover, in so far as an applicant alleges a continuing violation of his rights after 14 December 1995, the case may fall within the Chamber's competence *ratione temporis* (*see Bastijanović* v. *Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, Case No. CH/96/8, decision of 4 February 1997, Decisions 1996-97).

106. The Chamber notes that the applicant was placed on the waiting list prior to the entry into force of the Agreement on 14 December 1995 and has remained thereon up to this day. The Chamber finds it established that this continuing placement has not terminated his working relationship with the company. Therefore, the applicant's grievance in respect of his placement on the waiting list and inability to go back to work relates to a situation which has continued after 14 December 1995. To this extent, the situation therefore falls within the Chamber's competence *ratione temporis*.

107. In so far as the application relates to the company's decisions as such to stop paying the applicant's salary and related contributions, the Chamber lacks competence *ratione temporis.* This decision has nonetheless produced effects which have continued up to this date. Accordingly, the Chamber is competent to examine the fact that the applicant's salary and related contributions have not been paid after 14 December 1995.

108. The cessation of the payment of compensation in July 1997 also falls within the Chamber's competence. Finally, the Chamber is also competent *ratione temporis* to examine any omission on the part of authorities for which the Federation is responsible under the Agreement, in so far as such omission has occurred or continued after 14 December 1995.

4. Requirement to exhaust effective domestic remedies

109. The Chamber must next consider whether, for the purpose of Article VIII(2)(a) of the Agreement, any "effective remedy" was available to the applicant in respect of his complaints and, in the affirmative, whether he has demonstrated that it has been exhausted. It is incumbent on a respondent Party arguing non-exhaustion to show that there was a remedy available to the applicant other than his application based on the Agreement and to satisfy the Chamber that the remedy was an effective one.

110. In the present case, the Federation has recognized, at the Chamber's hearing in December 1998, that the applicant had no effective remedy at his disposal for the purposes of Article VIII(2)(a) of the Agreement. In these circumstances the Chamber concludes that the application is not inadmissible under Article VIII(2)(a) of the Agreement, notwithstanding that hearings before the Municipal Court in Livno have been held in the applicant's civil case against the company after the Chamber held its own hearing in the present case.

111. No other ground for inadmissibility of the application has been established.

5. Conclusion

112. In conclusion, the Chamber accepts this case as being admissible in so far as it is directed against the Federation and in respect of acts or omissions which have either occurred or continued after the entry into force of the Agreement on 14 December 1995. The Chamber rejects this application as being inadmissible in so far as it has been considered in respect of Bosnia and Herzegovina and in so far as relating to other events prior to 14 December 1995.

B. Merits

113. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for by the Convention and the other international agreements listed in the

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Appendix to the Agreement.

114. Under Article II of the Agreement, the Chamber has jurisdiction to consider (a) alleged or apparent violations of human rights as provided in the Convention and its protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix. Under Article I(14) of the Agreement, the Parties shall secure to all persons within their jurisdiction the enjoyment of the aforementioned rights and freedoms without discrimination on any ground such as sex, race, colour, language, religion, political, or other opinion, national or social origin, association with a national minority, property, birth or other status.

115. The Chamber has held in *Hermas v. The Federation of Bosnia and Herzegovina* (Case No. CH/97/45, decision on admissibility and merits of 16 January 1998, Decisions and Reports 1998, paragraph 118) that the prohibition of discrimination is a central objective of the General Framework Agreement to which the Chamber must attach particular importance. Article II(2)(b) affords to it the jurisdiction to consider alleged or apparent discrimination on any ground in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Agreement, amongst others the International Covenant on Economic, Social and Cultural Rights.

1. Discrimination in the enjoyment of the right to work as well as to just and favourable conditions of work, as guaranteed by the International Covenant on Economic, Social and Cultural Rights

116. The Chamber will first consider the allegation of discrimination under Article II(2)(b) of the Agreement in relation to Articles 6 and 7 of the ICESCR which, as far as relevant, read as follows:

> Article 6(1): "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
>
> Article 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
>
> (a) Remuneration which provides all workers, as a minimum, with:
>
> (i) fair wages and equal remuneration for work of equal value without distinction of any kind, ...
> (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant; ..."

(a) Impugned acts and omissions

117. The Chamber will now examine which precise acts and omissions affecting the applicant can be imputed to the Federation. It is undisputed that his employment relationship with the Livno-Bus Company was never terminated but that he was moved to the waiting list, thereby obtaining a special status as foreseen by the special legislation applicable in circumstances of war or immediate threat of war. This fact was also confirmed by the company's representative before the Municipal Court in Livno on 11 March 1999 (see paragraph 34 above).

118. The Chamber has already found itself competent to examine the fact that the applicant has remained on the waiting list after 14 December 1995. Further acts possibly attracting the responsibility of the Federation under the Agreement include the company's vacancy announcement published internally for the purpose of regularising the employment relation of those persons who had joined the company during the war; the actual confirmation of those workers' employment relation whereas the applicant remained on the waiting list after the cessation of the state of war and the immediate threat of war; the cessation of payment of compensation and contributions to the pension fund and for social security; and the alleged failure of the Labour Inspection and the courts to act in the applicant's case.

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119. All these acts relate to differential treatment of the applicant, as compared with employees of another ethnic or national origin and thus involve a potential interference with the applicant's rights under Articles 6 and 7 of the ICESCR, and a potential failure in the Federation's positive obligation to secure protection of those rights without discrimination.

(b) Differential treatment and possible justification thereof

120. Before examining whether there has been discrimination contrary to the Agreement the Chamber recalls the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee, whose findings reflect the general principles of international law with respect to the prohibition of discrimination. Both bodies have consistently considered it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

121. There is a particular onus on the respondent Party to justify otherwise prohibited differential treatment which is based on any of the grounds explicitly enumerated in Article I(14) of the Agreement, including religion or national origin. In previous cases, the Chamber has taken a similar approach (see the above-mentioned *Hermas* decision, loc.cit., paragraphs 86 et seq., and *Kevešević v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/46, decision of 12 September 1998, Decisions and Reports 1998, paragraph 92; and *Đ.M. v. The Federation of Bosnia and Herzegovina*, Case No. CH/98/756, decision of 14 May 1999, paragraph 72, to be published).

122. The applicant has essentially argued that he was placed and kept on his employer's waiting list merely due to his Bosniak origin. The Federation, for its part, has argued, on the one hand, that his placement on that list was justified by Article 5 of the Municipal Decision on the Way of Implementing and Executing the Working Duty in the Livno area issued on 2 June 1992, so as to guarantee his safety, for other security reasons, and because of the reduced transportation demand due to the war. On the other hand, the Federation has conceded that the company never formally notified the applicant in writing of his placement on the waiting list, which cannot be considered lawful. In any case, the Federation agrees that it was unacceptable that the company employed new workers as long as the applicant and others remained on the waiting list. The company should instead have called those on the waiting list back to work if it needed workers for those posts. In no circumstances could the employees on the waiting list have been expected to apply for the "vacant positions" in April 1996 because they still remained employees of the company.

123. The Chamber has already delimited its competence *ratione temporis* and can only consider the alleged discrimination in so far as it is alleged to have continued after 14 December 1995. It can therefore not adjudicate whether it was discriminatory to place the applicant on the Livno-Bus company's waiting list in July 1993 due to his Bosniak origin. The Chamber finds it established, however, that only Bosniaks remained on the waiting list after 14 December 1995. In this respect there has been, at least from this date onwards, differential treatment of the applicant in comparison with his colleagues of other ethnic or national origins. In its subsequent examination, the Chamber must nevertheless take account of those events occurring before 14 December 1995 which led to the applicant's placement on the waiting list.

124. It appears to the Chamber that the company's decision to place those workers on the waiting list was due to the war circumstances that influenced the amount and the nature of the company's business. The company made use of the special legal provisions (see paragraphs 73-76 above) that took account of reduced business and safety considerations. In application of those provisions and in view of the particular groups of passengers (mainly soldiers, internally displaced and other persons of Croat origin) served by the company during the war, the Chamber can accept that the applicant together with the 51 other Bosniak employees, mainly drivers, were originally placed on the waiting list for their personal safety and in order to avoid disturbances on the buses. For the same reason, the Chamber can further accept that new drivers of Croat origin temporarily replaced the Bosniak drivers placed on the waiting list.

125. However, when the special war-related circumstances ceased to exist, the conditions for placing employees on the waiting list no longer applied and the company should have called the

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employees on the waiting list back to work. The Chamber notes that the Bosniak-Croat war ended with the Washington Agreement of March 1994 and that officially the state of war in Bosnia and Herzegovina ceased already at the end of 1995. In April 1996 the Livno-Bus Company offered formal labour contracts to those persons of Croat origin who had temporarily replaced the applicant and his Bosniak colleagues. The evidence before the Chamber shows that at the time none of the Bosniak drivers on the waiting list were invited to return to work, whether in their old positions or elsewhere in the company.

126. Given that only workers of Bosniak origin have remained on the waiting list, but that roughly 40 workers of Croat origin have either been formally employed or recruited as drivers after the end of the hostilities and receive regular salaries of approximately 500 KM or more per month, the Chamber cannot accept the Federation's argument that the applicant's differential treatment was justified in view of the company's financial difficulties.

127. The evidence before the Chamber further tends to show that, following the war, the management of the company and the Mayor of the Livno Municipality have sought to match the ethnic origin of employees to the population of Livno, which to a large extent is of Croat origin, thereby avoiding any "over-representation" by Bosniaks on the work force. There is no legal basis for such a policy, and in the case in point the Chamber cannot accept as a valid ground for differential treatment that the composition of the workforce should reflect the ratio of the different ethnic groups within the population of Livno and Canton 10.

128. The Chamber furthermore notes that the above approach of the company seems to have prevailed up to date without any inspection or other intervention by officials of the Livno Municipality or Canton 10, although the competent authority of the Federation has, on several occasions, ordered that action be taken to verify the status of the applicant and others on the waiting list. It has been for the respondent Party to show that its authorities have taken reasonable steps to investigate the matter and, if necessary, take legal action against the company.

129. It is true that the 52 Bosniaks on the waiting list were not replaced with an equal number of Croat employees. The Chamber cannot speculate whether or not the applicant would have been included in the group of employees who should have been called back to work to replace the Croat persons temporarily working for the company during the war. However, this fact does not exclude the finding of discrimination as the applicant was nonetheless, for the reasons above, treated differently as compared to workers of Croat origin, and as he, as a Bosniak employee, was affected directly and individually by that differential treatment.

130. In the light of all these considerations the Chamber finds it established that the applicant has been subjected to differential treatment in comparison with colleagues of Croat origin. In so far as this treatment has continued after the advertisement and the formal employment of about 40 Croat workers in April 1996, the Chamber finds no evidence showing that the applicant's treatment has been objectively justified in pursuance of a legitimate aim by means proportional to that aim. The Chamber, therefore, finds that the municipal and Cantonal authorities of Livno and Canton 10 have either actively – through the Managing Board of the Livno-Bus Company – or at the very least passively – by not acting either through that organ or through its labour inspectors and other officials – discriminated against and/or tolerated discrimination against the applicant due to his Bosniak origin.

131. This discrimination relates to the enjoyment of the right to work, i.e. the right of the applicant to gain his living by work which he freely chooses, and to the enjoyment of just and favourable conditions of work. Although the applicant's employment contract with the Livno-Bus Company remained valid**,** he has been discriminated against in the enjoyment of his right to an equal remuneration, which would have provided him with a decent living for himself and his family.

132. It follows that the applicant has been discriminated against in the enjoyment of his right to work, and to just and favourable conditions of work, as defined in Articles 6 and 7 of the ICESCR, the Federation thereby being in violation of its obligations under Article I of the Agreement to secure to all persons within its jurisdiction, without discrimination on any ground, the rights guaranteed by the treaty in question.

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2. Article 6 of the Convention

133. The applicant and *amici curiae* further argue that there has been a violation of Article 6 of the Convention in that the applicant has been denied his right to a fair hearing within a reasonable time before an independent and impartial tribunal.

134. The relevant part of Article 6 (paragraph 1) of the Convention provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by an independent and impartial tribunal established by law."

135. Article 6(1) requires there to be a dispute over a right and for this right to be of a civil nature. In the present case, the Chamber finds that there is a dispute before the Municipal Court in Livno relating to the applicant's working relation, thereby affecting a civil right of his (cf., e.g., the above-mentioned *Kevešević* decision, loc. cit., paragraph 63). Article 6(1) therefore applies to the proceedings before the Municipal Court.

(a) Independent and impartial tribunal

136. In considering whether there has been a violation of Article 6(1) of the Convention for want of independence of a tribunal the European Court of Human Rights has had regard to the manner of appointment of the members of the tribunal, the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see Eur. Court H.R., *Campbell and Fell v. The United Kingdom* judgment of 28 June 1984, Series A No. 80, pages 39, 40, paragraph 78). It has to be ensured not only that justice is done but that it is also seen to be done (ibid., page 39, paragraph 77).

137. In the present case both witness Aranaz and the Assistant Federation Ombudsman, acting in his capacity as *amicus curiae*, have stated that there is a pattern of discrimination against persons of Bosniak origin with respect to the enjoyment of their rights before the courts in Canton 10. Witness Aranaz has reported that the courts in Canton 10 have generally not been functioning. He testified that some judges in Livno had informed him of a general instruction by the Cantonal Government to the judges not to process cases involving plaintiffs of Bosniak or Serb origin. In his letter of 14 November 1997 Mr. Aranaz further stated that the Courts in Livno could not provide "proper protection" because they were "politically controlled by HDZ". Moreover, in his letter to the Chamber of 26 March 1998, Mr. Aranaz cited a judge who had informed him that the judges had received instructions from the Governor of the Canton. Sources in the court had further told him that if hearings involving plaintiffs of Bosniak origin were scheduled, "this was just a way to cover (things) up and to get rid of the pressure from the international community." Regarding the court proceedings initiated by the applicant and his Bosniak colleagues, the Assistant Ombudsman stated that he had been informed by a judge in Livno that the applicant's case and some 400 similar cases remained pending before the courts in Livno and Tomislavgrad, since the courts were, in the words of that judge, awaiting adequate legislation regulating the issue in the best way.

138. The Chamber recalls its findings in the above-cited case *Đ.M. v. The Federation of Bosnia and Herzegovina* in respect of the Livno Municipal Court which is the tribunal under scrutiny also in the present case (see paragraph 87 of the *Đ.M.* decision). In the *Đ.M.* case the Chamber noted the apparent practice in Canton 10 that only members or sympathisers of the ruling Croat party are appointed to judicial office and that political pressure is being exerted on judges. The Federation had conceded in that case that there was "a problem" in the court system in Canton 10 "in respect of both efficiency and independence". Additionally, the Chamber established in the *Đ.M.* case that in October 1997 the then Governor of Canton 10 had sent a letter, *inter alia*, to the municipal courts, seeking to influence the judges in cases with plaintiffs of Bosniak origins not to evict displaced persons from their temporary dwellings. The judge in question had shown this letter to the Assistant Federation Ombudsman (ibid., paragraphs 35, 76 of the *Đ.M.* decision). On the overall evidence before it, the Chamber concluded that an objective observer could legitimately doubt that the Livno Municipal Court would be independent in the applicant's case. The Chamber recalled that a court which is not entirely independent of the political bodies cannot objectively comply with the

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requirement of impartiality (see paragraph 88 of the *Đ.M.* decision).

139. Reverting to the present case, the Chamber recalls that the Agent of the Federation stated at the Chamber's public hearing that she "would leave it for the Chamber to judge whether actions undertaken by Livno-Bus Company and the courts of Canton 10 have led to a violation of Article 6 of the Convention (...)." The Chamber finds the various evidence (largely unchallenged by the Federation) plausible and concludes that the Livno Municipal Court cannot be regarded as independent of political influence when examining the applicant's case. The fact that hearings have recently been scheduled by the Livno Municipal Court in the case of the applicant does not exclude such a finding. Accordingly, the applicant's rights under Article 6(1) of the Convention have been violated already at the present stage of the proceeding before that court.

140. As the tribunal in question has been found, in this case, to lack independence for the purposes of Article 6 of the Convention, the applicant cannot, as matters stand today, expect to have his case heard impartially and fairly by the Livno Municipal Court. In view of these findings, which take into account the applicant's ethnic origin, it is not necessary to consider the issue of discrimination separately.

(b) Length of proceedings

141. In view of the above finding there is no need to inquire further whether the length of the proceedings before the Livno Municipal Court also violated the applicant's right to a fair trial as guaranteed by Article 6(1).

3. Other treaty provisions

142. The applicant and *amici curiae* also submit that there has been a violation of a number of other treaty provisions (see paragraphs 67-71 and 80).

143. In view of the above finding of discrimination the Chamber finds it unnecessary to examine, either as a matter of discrimination or as isolated issues, whether there has also been a violation of any of those other provisions.

VII. REMEDIES

144. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the Federation to remedy breaches of the Agreement which it has found, including orders to cease and desist, and monetary relief (including pecuniary and non-pecuniary injuries).

145. The applicant requests that the Federation be ordered to reinstate him in his former work. He further requests that the Federation be ordered to compensate him for lost income and related contributions that were not paid during the time he has been placed on the waiting list. He requests a total of 391 German Marks (DEM) per month in salary plus contributions amounting to 92 % of his salary (contributions to salaries and personal income amounting to 15 %, for the pension fund to 35 %, for health insurance to 25 %, for culture, education and sport to 15 %, and for the unemployment fund to 2 %), that is an additional 360 DEM per month, minus the compensation that he received until July 1997. In total, he claims 9,012 DEM per year for five years, amounting to 45,060 DEM less 3,890 DEM in compensation initially received by him while placed on the waiting list, i.e. a total of 41,170 DEM. In addition, the applicant requests to be compensated for the expenses that he incurred for attending the Chamber's hearing, in the total amount of 160 Konvertibilnih Maraka (KM).

146. The Federation leaves it to the Chamber to determine to which extent, if any, the applicant should be awarded compensation.

147. The Chamber finds it appropriate to order the Federation to undertake immediate steps to ensure that the applicant is no longer discriminated against in his right to work and to just and favourable conditions of work, and that he be offered the possibility of resuming his work on terms equal with those enjoyed by other employees and commensurate with his qualifications as a driver. The Chamber takes account of the fact that the Livno-Bus Company is in the process of being

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privatized. Nonetheless, under the existing legal provisions and the Federal Directive of 13 January 1997 the Federation has to, and can, make sure that the company follows the law by re-employing the applicant, unless special circumstances were to allow for a termination of his contract. The Chamber would refer, in particular, to the competent labour inspectors who have been given the responsibility to supervise such compliance, and the authority to take action against companies in case of non-compliance.

148. The Chamber finds it appropriate to order the Federation to take all necessary steps to ensure that the applicant's civil action against the Livno–Bus Company is examined by an independent and impartial judiciary.

149. With respect to possible pecuniary compensation, the Chamber recalls that its jurisdiction *ratione temporis* is limited to the period after the entry into force of the Agreement on 14 December 1995 (see paragraphs 104-108 above). Therefore, the Chamber cannot award any compensation for damage suffered before that date, or relating to events before that date. Compensation may be awarded in particular in respect of pecuniary or non-pecuniary (moral) damage as well as for costs and expenses incurred by the applicant in order to prevent the breach found or obtain redress therefor. Any costs and expenses claimed should be specified (see, e.g., *Damjanović v. The Federation of Bosnia and Herzegovina*, Case No. CH/96/30, decision of 11 March 1998, Decisions and Reports 1998, paragraph 23).

150. The Chamber has found the Federation in breach of its obligations under the Agreement, partly as a result of the decision of the Livno-Bus Company in April 1996 to formally employ those persons of Croat origin who had temporarily worked for the company during the war. The Chamber finds it appropriate to award the applicant, by way of pecuniary compensation, a lump sum of 24,000 KM covering moral and pecuniary damage, including the lost salaries and contributions less the monthly payments received up to the end of June 1997. In arriving at this sum, the Chamber has also taken into account the possibility that, even if the applicant had not suffered discrimination, he might not have been re-instated in his post as driver or elsewhere in the company. This is so, since even if the company had not recruited about 40 new employees of Croat origin, only an equivalent number of Bosniaks on the waiting list might have been offered the possibility of returning to work in the post-war circumstances.

151. The Chamber finds it appropriate to order the Federation to pay to the applicant, by way of further compensation for non-pecuniary damage, 15 KM for each day, from the date of delivery of the present decision until the date of compliance with the remedy spelled out in paragraph 147 above. The cumulative amount of 15 KM per day will mature on the last day of each month from the date of delivery of the present decision until the date of compliance with the ordered remedy.

152. Moreover, the Chamber awards to the applicant 160 KM for expenses incurred in relation to the public hearing in Sarajevo.

153. Additionally, the Chamber awards 4 % interest as of the date of the expiry of a three-month time period set for the implementation of the present decision, on the sums awarded in paragraphs 150 and 152 and on the 15 KM per day of non-compliance as ordered in paragraph 151 as of maturity of the sum in the end of each month.

VIII. CONCLUSIONS

154. For the above reasons, the Chamber decides:

1. by 10 votes to 2, to declare the application admissible in so far as directed against the Federation of Bosnia and Herzegovina and relating to events occurring or continuing after 14 December 1995;

2. unanimously, to declare inadmissible the remainder of the application directed against the Federation in so far as relating to other events prior to the entry into force of the Human Rights Agreement (Annex 6 to the General Framework Agreement for Peace);

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3. unanimously, to declare the application inadmissible in so far as considered in respect of Bosnia and Herzegovina;

4. by 11 votes to 1, that the applicant has been discriminated against in the enjoyment of his rights to work as well as just and favourable conditions of work, as guaranteed by Articles 6 and 7 of the International Covenant on Economic Social and Cultural Rights, the Federation thereby being in violation of Article I of the Agreement;

5. by 10 votes to 2, that there has been a violation of the applicant's right, as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to a hearing before an independent and impartial tribunal, the Federation thereby being in violation of Article I of the Agreement;

6. unanimously, that it is not necessary to examine the case further under Article 6 of the Convention or any other treaty provision invoked, whether in isolation or as a matter of possible discrimination;

7. by 10 votes to 2, to order the Federation to ensure through its authorities that the applicant is immediately offered the possibility of resuming his work as driver in the Livno-Bus Company without suffering any further discrimination;

8. by 11 votes to 1, to order the Federation to undertake all necessary steps to ensure that the applicant's civil action against the Livno-Bus Company is examined by an independent and impartial judiciary;

9. by 11 votes to 1, to order the Federation to pay to the applicant, within three months, 24,000 *Konvertibilnih Maraka* (KM) by way of compensation for non-pecuniary and pecuniary damage;

10. by 10 votes to 2, to order the Federation to pay to the applicant, by way of further compensation for non-pecuniary damages, 15 KM for each day from the date of delivery of the present decision until the date of compliance with the order in conclusion no. 7. The cumulative amount of 15 KM per day will mature on the last day of each month from the date of delivery of the present decision until the date of compliance with the order in conclusion no. 7;

11. by 11 votes to 1, to order the Federation to pay to the applicant, within three months, 160 KM by way of compensation for incurred expenses;

12. by 11 votes to 1, that simple interest at an annual rate of 4 % will be payable over the sums awarded in conclusions nos. 9 and 11 or any unpaid portion thereof, from the day of expiry of the three-month period referred to in conclusions nos. 9 and 11 and from the date of maturity at the end of each month referred to in conclusion no. 10, until the date of the settlement;

13. unanimously, to order the Federation to report to it by 8 October 1999 on the steps taken by it to comply with the above orders.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex I: Partly Dissenting Opinion of Mr. Rauschning
Annex II: Dissenting Opinion of Mr. Juka

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ANNEX I

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting Opinion of Mr. Rauschning.

PARTLY DISSENTING OPINION OF MR. DIETRICH RAUSCHNING

1. While I voted for conclusion number 4 stating that the applicant has been discriminated against in the enjoyment of his rights to work, I cannot share the opinion of the majority as to conclusion number 5. I accept that there are some indications to doubt the independence of the Municipal Court of Livno, but there is not enough evidence to establish that the Livno Municipal Court including the competent panel is not an independent tribunal in the meaning of Article 6 of the Convention.

2. The reasoning leading to conclusion number 5 is to be found mainly in paragraph 137 of the decision. The first sentence states the assessment of the witness Mr. Aranaz and the *amicus curiae* that there is a pattern of discrimination before the courts against persons of Bosniak origin in Canton 10. It is the task of the Chamber to judge on the basis of facts and evidence and not to restate the assessment of other persons. Discrimination before the courts may be an indication of a lack of impartiality, but is as such no evidence of lack of independence.

3. The second sentence does not support the conclusion as to the lack of independence either: if the Court is not functioning, that is not an evidence for its being dependent. The reported statement might be true for early 1997, but as stated in paragraph 29 the applicant together with other workers placed on the waiting list filed a joint civil action with the Municipal Court of Livno on 20 July 1997. This action was rejected by the Court's decision of 29 December 1997, which indicates that the courts were functioning at that time.

4. The third sentence refers to the testimony that some judges had told the witness that they had received instructions from the government not to deal with cases of Bosniaks against Croats; Mr. Aranaz had stated this earlier in his letter to the Chamber, dated 26 March 1998 (sentence 5 of paragraph 137). This may put the independence of the Livno Municipal Court in question. But such instructions were obviously illegal. Illegal and informal, and not public, instructions issued by the government to the judiciary indicate that the courts are not independent, if such instructions influence the proceedings or the merits of the decision. The Chamber has no evidence of such influence in this case: it is not known whether the judges competent to decide the case of the applicant received such illegal instructions and how they reacted. The common action of the 52 plaintiffs was rejected after five months for formal reasons and the Chamber did not investigate whether this decision was legal or illegal.

5. The fact that the action was rejected cannot be taken as an indication that the Court followed the above-mentioned instruction not to deal with cases brought by Bosniak plaintiffs. At the public hearing the lawyer of the applicant was not able to answer questions concerning the decision of the Court, whether he appealed, and on what dates he submitted a new claim on behalf of the applicant to the Municipal Court of Livno. Even in the subsequent written proceedings neither he nor the Agent of the Federation was able to provide the Chamber with the Court's decision of December 1997. From the minutes of the court hearings in respect of the applicant's new claim it does not appear that the proceedings were influenced by the illegal instructions of the government.

6. It is true that the Court did not hold the first hearing until 13 months after the lodging of the new civil action. The Chamber, however, did not investigate the reasons for this delay and it has not been established that the reason is lack of independence. The case of the applicant is the leading case on the question of the right to re-instatement of the Bosniak workers on the waiting-list of the Livno-Bus Company and their right to claim payment of compensation i.e. salary and contributions, and the Court's decision might become a precedent for a number of similar cases. The fact that since the final hearing on 13 March 1999 a judgment was not delivered up to the beginning of June 1999 does not necessarily indicate a lack of independence of the competent Court.

7. Even the last sentence of paragraph 137 does not necessarily lead to the conclusion that the

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Court is not independent: of course, the courts have to apply the laws which are valid at present; however, the reasoning that the numerous cases of the workers being put on the waiting list might be best dealt with by new legislation does not indicate a lack of independence.

8. In paragraph 138 of the decision the Chamber refers to its decision in the case D.M. (Case No. CH/98/756), delivered on 14 May 1999. In that decision the Chamber stated that the competent court, the Municipal Court of Livno, was not an independent tribunal in the applicant's case. But that case differs from the Zahirović case: there was evidence of an illegal instruction of the Governor in written form concerning a specific type of cases, and this instruction not to deal with such cases was followed.

9. In support of its conclusion the Chamber further refers, in paragraph 139, to the statement of the Agent of the Federation that she "would leave it to the Chamber to judge whether actions undertaken by Livno Bus Company and the courts of Canton 10 have led to the violation of Article 6 of the Convention". That statement does not necessarily show that the courts in Canton 10 are in general not independent. Taking into account that the Agent had criticised the length of the proceedings, her statement might refer to that aspect of Article 6 of the Convention. For the interpretation of the statement of the Agent one has to take into account that the Agent was not able to obtain enough information from Canton 10 and that consequently she could not defend the Livno authorities effectively but had to leave the matters open.

10. The Chamber stresses in paragraph 136 the principle that justice has to be seen to be done. This general statement does not mean that the judiciary must positively prove its independence in order to meet the requirements of Article 6 of the Convention. For finding a violation of Article 6 of the Convention for lack of independence of a court there must be some indications that in the case in question the competent and deciding court follows illegal instructions of the executive. If the threat to the court's independence is not based on the law, there must be sufficient evidence in practice that the specific deciding body, in general or in the specific case, follows those instructions.

11. According to my assessment the Chamber did not, therefore, establish sufficient evidence for the conclusion that the Municipal Court of Livno in the deciding panel was not independent in dealing with this case.

(signed)
Dietrich RAUSCHNING

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ANNEX II

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting Opinion of Mr. Juka.

DISSENTING OPINION OF MR. ŽELIMIR JUKA

I. INTRODUCTION

I.1. In 1992 a war broke out in Bosnia and Herzegovina and it lasted until 14 December 1995. All three constituent nations (Serbs, Bosniaks and Croats) were involved in the war. The whole economy in Bosnia and Herzegovina was serving the three armies. Every army recruited persons from the respective nation either to serve on the front-line or to work in the logistics (economy); with respect to members of other nations, in particular within the territory of the present Federation, the Law on Working Relations provided for the so-called institute of "waiting list" with certain compensation being offered in accordance with the material possibilities of the respective firm or legal person. This Law was published in the Official Gazette of the Federation of Bosnia and Herzegovina, No. 16/93. This solution was humane so as to avoid recruiting a person in war activities against his own nation. During this war the situation in the large territory of the Federation was such that there was no compensation at all for such workers, or that workers subject to a compulsory work order in some factories would receive food packages the value of which was nearly 10 DEM and pensioners about 2 DEM. International humanitarian aid was distributed to prevent starvation. In those most difficult times, during the hostilities between Bosniaks and Croats, the workers in the Livno-Bus Company in the Municipality of Livno who were on the waiting list were receiving 80 DEM per month, and all pensioners were receiving 50 DEM per month. This situation endured until May 1997 (throughout the war and for a year and a half thereafter). This amount sufficed, during the war and the post-war period, not only for survival but also for a decent living, because the prices of goods were as low as symbolic. This situation prevailed only in some municipalities within the Federation and the Municipality of Livno may be proud for having provided dignified social security to its population. These are facts generally known both to all Bosniaks and the Croats in the Federation and to the representatives of the international community whose task was to monitor the social security of the population (UNHCR).

I.2. According to the Peace Implementation Agenda (Annex to the Declaration of the Peace Implementation Council in Bosnia and Herzegovina, Madrid, 16 December 1998), the long lasting war in Bosnia and Herzegovina had the following consequences:

a) (Citation from part IV, paragraph 1 of the document:)
"The war all but destroyed the economy of Bosnia and Herzegovina. Since then, it has been assisted by billions of dollars provided by the international community … The flow of donor assistance has reached its height, and will soon inevitably start to diminish." (My comment: The Livno-Bus Company has not received any voluntary contributions.)

b) (Citation from part IV, paragraph 5:)
"The Council invites donors to complete the four-year reconstruction programme in 1999 by sufficient allocations at the next donors' conference …"

c) (Citation from part IV, paragraph 14:)
"The Council calls for the convocation by April 1999 of a country-wide conference on private sector development, to be co-hosted by the authorities of Bosnia and Herzegovina, the European Union, World Bank, IMF, USAID, EBRD and other donors…"

d) (Citation from part IV, paragraph 19:)
"The Council emphasizes the need for adequate social protection. It urged the Entities to DEVELOP, in co-operation with donors, A STRATEGY TO FIGHT POVERTY, INCLUDING SOCIAL PROTECTION FOR VULNERABLE ELEMENTS OF SOCIETY (my emphasis) by September 1999."

I.3. War damage suffered by the Livno-Bus Company was slightly less significant than in some other areas, but it follows from the information obtained at the public hearing that it is vast because

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the Livno-Bus Company had 90-100 busses before the war and it has only some 30 today. Thus, the damage amounts to two thirds. Before the war it had 280 workers and only 126 are currently working in the company out of whom 20 workers are redundant.

As a result of the war and due to the ruined economy 60% of the able-bodied population in the Federation are either on a waiting list or waiting to be employed for the first time and the percentage of such population in the Republika Srpska amounts to 80%.

CONCLUSION

1. Companies may not be held responsible for the economy devastated by war and for the economic impossibility to reinstate workers into their pre-war, almost destroyed, companies.

2. It is not incumbent on the companies to afford protection against unemployment.

3. The Federation is responsible for affording protection against unemployment, but within the limits, however, of its economic possibilities, which are presently minimal; in essence the Federation itself would be financially bankrupt without international economic aid.

I consider that, without taking into account the facts stated in the introduction to this separate opinion, it is not possible to establish whether there has been a violation of fundamental human rights and freedoms in the Case *Zahirović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*.

II. FACTS

II.1. The conflict between Croats and Bosniaks within the municipality of Livno broke out on 21 July 1993. A total mobilization of both people and equipment for military purposes was carried out. All vehicles of the Livno-Bus Company were taken over by the Croat Army, which then placed only Croats to be drivers (the same was done by the respective armies of Bosniaks and Serbs in Bosnia and Herzegovina within the territories they controlled). All three armies placed members of the other two nations who were working in companies or institutions on waiting lists for security reasons, or they simply dismissed or removed them without formal decisions. The legal basis for placing workers on a waiting list within the territory of the Federation was Article 7 of the Law on Working Relations. This solution during the war was not inconsistent with the international law on wars and it was more humane to put such workers on the waiting list than to send them to fight against the army of their own nation (unfortunately there were such cases during the war, but it is outside the Chamber's competence). This legal solution has not been changed yet in the Federation and this institute has been widely used in practice, with respect to members of all nationalities, regardless of the fact whether Bosniaks or Croats are in minority in a certain place due to the ruined economy.

II.2. While they were on the waiting list the Bosniak workers of the Livno-Bus company were paid 80 DEM per month as from 21 July 1993 until June 1997 (nearly four years). The legal basis for the payment of this compensation is Article 7 of the Law on Working Relations according to which the companies pay compensation and contributions on the basis of their financial possibilities. This income in Bosnia and Herzegovina, necessary to pay workers on the waiting list did not originate from the business transactions of the respective firm because the market was not functioning at all during the war (except the arms market). The Army allocated this income from its budget; from where they received that money is not the subject of the Chamber's decision. When the war ceased and the army budgets ceased to function, companies remained without any income and are no longer able to pay compensation and contributions to and for workers on the waiting list.

II.3. In addition to the termination of army budgets at the end of the war in Bosnia and Herzegovina, the economy was entirely ruined as a result of the war, as pointed out in the Introduction to this opinion. In such an economic situation there is no work even for those employees who remained in the companies during the war; they have been placed on the waiting list without any compensation. Thus, this gave rise to an economic catastrophe in respect of employment in Bosnia and Herzegovina as a result of the war, and the further result is that several thousands of citizens lost their job without any compensation. The international community then intervened with

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humanitarian aid and thereby prevented the total destruction of the nation/people. Now the international community plans to gradually replace the humanitarian aid by the reconstruction of the economy so as to enable previous workers to be reinstated and new ones to be employed. This particular plan of the international community is defined in Chapter IV of the Declaration of the Peace Implementation Council in Bosnia and Herzegovina (Madrid, 16 December 1998) and by some other documents of the UNHCR which has generously supported the economy of Bosnia and Herzegovina.

ONLY IF ONE OF THE PARTIES IN BOSNIA AND HERZEGOVINA REFUSES TO MAKE USE OF THE INTERNATIONAL ECONOMIC RELIEF IN ACCORDANCE WITH THE INTERNATIONAL CONVENTIONS FOR THE PROTECTION OF HUMAN RIGHTS, THIS COURT WOULD BE COMPETENT TO ESTABLISH BY ITS DECISIONS A BREACH OF THE DAYTON AGREEMENT.

II.4. Were both the municipal courts of Bosnia and Herzegovina and this Chamber to order companies to reinstate all workers who used to work in the respective companies before the war (irrespective of the ruined economy) and to pay them all outstanding salaries AND SHOULD SUCH DECISIONS BE ECONOMICALLY ENFORCEABLE SO AS TO REVIVE THE RUINED ECONOMY, the need for the vast material support and extensive engagement of the international community through its extensive (but not excessive) apparatus would cease to exist.

II.5. On the basis of the statements in the above chapter it is not possible TO CONSIDER IN ISOLATION the case of applicant Zahirović, as dealt with by the Chamber. IT SHOULD BE CONSIDERED TOGETHER WITH THE ABOVE-STATED AND, IN PARTICULAR, HAVING IN MIND THE GENERALLY RECOGNISED RULE OF INTERNATIONAL LAW TO AWARD UNEMPLOYMENT ALLOWANCE IN ACCORDANCE WITH THE STATE OF RESOURCES OF THE RESPECTIVE STATE.

III. MAY THE RESPONDENT PARTY BE HELD RESPONSIBLE FOR THE ACTS OF THE TRANSPORT COMPANY LIVNO BUS?

III.1. Livno-Bus is a transport company and has thirty busses and 126 employees. This company is a limited liability company (d.o.o.) with mixed ownership where the private capital participates with 65% and the socially (state) owned one with 35%. Article 3 of the Law on Privatization of Companies of the Federation of 28 November 1997 (Official Gazette of the Federation No. 27/97) is in accordance with Annex 9 of the Dayton Agreement concerning the establishment of public corporations of Bosnia and Herzegovina; it lists explicitly companies in the Federation which function in the quasi-public sector (electricity company, water supply company, exploitation of mines and forests, media etc.). This Article explicitly states that transport companies do not fall within the quasi-public sector.

III.2. Annex 6 of the Dayton Agreement identifies the Parties against which one may institute proceedings before the Chamber, and these are the two Entities (the Federation and the Republika Srpska) and Bosnia and Herzegovina; there is no dilemma in this respect. However, when a question arises as to which Party is responsible, it may give rise to a dilemma. The answer to this question lies in Article II(2) of Annex 6 to the Dayton Agreement which prescribes (without any examples) that a Party is responsible if its organs (the organs of Bosnia and Herzegovina, the Federation and the Republika Srpska), Cantons and municipalities, or persons acting under the authority of such official organs violate human rights. The Chamber does not have available to it any evidence as to whether any and which authority issued orders to the Livno-Bus Company to the effect that it violates the applicant's human rights.

III.3. On the basis of the above stated one may draw the following conclusion:

III.4. The Federation is not responsible for the acts of the Livno-Bus Company.

III.5. Neither the Federation nor any municipal authority has issued, after 14 December 1995 (the date of the entry into force of Annex 6 to the Dayton Agreement) any order with respect to the applicant, Mr. Zahirović, and the decision of the Livno-Bus Company terminating the payment of compensation is exclusively attributable to the material impossibility to continue the payment of such compensation, and that particular decision was taken by the Livno-Bus Company (representatives of the 65% of private capital and representatives of the 35% of socially owned capital).

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III.6. The mere fact that the State has shares in a company and, in particular, where such shares are minor, this does not as such constitute a reason to hold the State responsible for human rights violations, especially if the company is not in the quasi-public sector. At any rate, applicant Zahirović did not file suit before the Municipal Court either against the State of Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina, the Canton or municipality; he filed suit against the Livno-Bus Company.

IV. EXHAUSTION OF DOMESTIC REMEDIES AND THE REQUIREMENT OF A COURT HEARING WITHIN REASONABLE TIME

IV.1. The applicant instituted proceedings before the Municipal Court of Livno together with 47 other workers requesting:

a) reinstatement into work;
b) compensation of their personal income instead of the compensation of 80 DEM;
c) payment of contributions;
d) interests.

This action was submitted on 20 July 1997. As the Municipal Court in Livno did not solve this dispute within 56 days the applicant submitted on 16 September 1997 an application to the Human Rights Chamber. The Municipal Court solved all these 48 cases (including the one of Mr. Zahirović) on 29 December 1997, thus the court resolved all 48 cases within a period slightly longer than 5 months. The actions were rejected as incomplete, the decision of the court became final and the applicant failed to appeal against it (so too failed the other plaintiffs).

IV.2. The general principle of international law is based on the belief that the State should be afforded all possible opportunities to remedy breaches of its obligations through its own legal system before it is subject to the international investigation or supervision. Only if the state authorities fail to protect the violated right the court shall consider the case (Eur. Court of Human Rights, Case Guzzardi v. Italy, 1980) and Case No. 9587/81 before the Strasbourg Commission according to which the applicant was obliged to file an appeal against the first instance judgment if he wished to assert his right before the Commission.

IV.3. The European Court on Human Rights has held that the mere doubt as to the success in the domestic proceedings does not relieve the applicant from the obligation to exhaust ALL domestic remedies; thus the applicant has to file an appeal against the first instance decision in the domestic proceedings if it has not been established with certainty that such appeal would have been futile. (The Chamber is not aware of any case law of the second instance court – the Cantonal Court in Livno.)

IV.4. In Case No. CH/97/54 also concerning employment the Chamber held that one year and eleven months did not constitute excessively lengthy proceedings for dealing with such cases. This concerned a case against the Federation of Bosnia and Herzegovina. In Cases Nos. CH/98/747 and CH/97/120 the Chamber held that before applying to the Chamber the applicants had to exhaust domestic remedies.

IV.5. On the basis of the above-stated in respect of Article VIII of Annex 6 of the Dayton Agreement the Chamber should have declared the present application inadmissible on 16 September 1997 because the applicant did not exhaust ALL domestic remedies.

IV.6. According to a report of the Municipal Court in Livno SU-178/98 dated 6 May 1998 all previous plaintiffs whose actions were rejected resubmitted new individual actions after the first one was rejected. It is certain that this happened in 1998, but the exact date is not certain. Neither the applicant nor his representative could answer at the public hearing, when asked by the Chamber, when they filed the suit. According to a report of the Municipal Court of Livno these actions do not have the same identity as the previous one, they were rather defined as a declaratory action for “the establishment of the existence of the labour relation”. Thus, this case has been pending before the Municipal Court of Livno some ten months and these are not too lengthy proceedings on the basis of

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the quoted case-law of Strasbourg and this Chamber.

IT IS NECESSARY TO POINT OUT THAT THERE HAS BEEN NO APPLICATION TO THE CHAMBER IN RESPECT OF THE NEW ACTION, WHICH IS NOT THE FIRST ONE; NOR WAS THE CHAMBER PROVIDED WITH THIS NEW ACTION IN WHICH, ACCORDING TO THE APPLICANT, HIS HUMAN RIGHTS WERE VIOLATED. In such a legal situation the position of the Strasbourg Commission is that the Commission may examine the same claim if the applicant has exhausted the new available remedies (Short Guide to the European Convention on Human Rights, Council of Europe, p. 136). According to the above-stated, when the applicant has exhausted ALL domestic remedies in respect of the new action and in respect to the alleged violations regarding the new action, he may submit a new application to the Chamber.

On the basis of what has been stated in the preceding paragraph, the Chamber may not (without having seen it and without a new application being submitted to the Chamber) issue a decision in respect of possible human rights violations with reference to the second action submitted to the Municipal Court of Livno some ten months ago. The new action further does not claim the compensation of personal income instead of compensation of 80 DEM and the payment of contributions. Moreover, the new action seeks only a decision establishing that the applicant's labour relation was not terminated. Consequently, the Chamber may not establish breaches of the Agreement which were not the subject of dispute in respect to remedies before the domestic court. The domestic law concerning employment determines different proceedings to establish and terminate a labor relation, including 30-day time-limits that are not subject to any changes, while the realization of monetary claims before courts is subject to being time-barred in two years.

V. EMPLOYMENT OF 27 NEW DRIVERS WITHIN LIVNO-BUS AFTER THE DAYTON AGREEMENT WAS SIGNED

V.1. 27 workers of Croat nationality were not employed on the basis of a vacancy announcement of 18 April 1996. During the conflict between Bosniaks and Croats which started on 21 July 1993 the management of the firm was seized by the army and the army employed 27 workers on 21 July 1993. These were drivers who transported soldiers, ammunition, weapons and food as war supplies to the front-line. They were doing this for almost three years (the same was done by all three armies in Bosnia and Herzegovina). It follows from this fact that these workers were employed with the Livno-Bus Company since 1993. The vacancy announcement of 18 April 1996 (the exact date remained in dispute) should not have been published at all. Its publishing had only a declaratory character, as the decision itself to employ "new workers" who had been working with the firm for three years. If the applicant or another interested party considered that the "re-employment" of these workers on the basis of the vacancy announcement in 1996 was not lawful, they were entitled to contest the vacancy announcement and "the employment" of 27 "new" workers, first before the organs of the Livno-Bus Company; subsequently, in case of a negative decision, they were entitled to file suit before the Municipal Court of Livno within 30 days (this time limit is not subject to extension). Neither the applicant nor any other worker from Livno-Bus Company used all remedies as provided by the Law of the Federation on Working Relations with Special Provisions for War Circumstances. (In Case No. CH/98/120 the Chamber declared an application regarding similar circumstances inadmissible on the grounds of non-exhaustion of domestic remedies.)

V.2. Due to what has been stated in the chapter concerning the facts in respect of the "re-employment" of 27 workers who, before this "employment" had worked in the Livno-Bus Company for three years and whose "employment" after the Dayton Agreement was not contested by any of the interested parties, these facts in respect to the "new" employment became irrelevant.

VI. DISCRIMINATION

VI.1. The Chamber established that this case involves discrimination by the "Croat authority" on the grounds of nationality because the applicant is a Bosniak.

VI.2. Such conclusion may not be drawn from the facts as stated in this separate opinion. The economic poverty of workers on the waiting list, including the applicant, and their reinstatement into

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work, is the outcome of the recent war and not the cause of the current prohibited acts of the Federation and Livno-Bus Company in which two thirds of the vehicles were destroyed during the war.

VI.3. The respondent Party stated in its observations dated 18 May 1998 that "Mr. Zahirović often pointed out his Croat nationality and also substantiated it by the possession of a certificate on citizenship, although he was not requested to do so, and therefore it cannot be claimed that his case involves discrimination on the ground of nationality." This claim was confirmed at the public hearing; asked by one member of the Chamber, Mr. Zahirović conceded to have said so, pointing out that he had Croat citizenship and that only his Muslim religion matters to him.

VI.4. The Livno Bus company employs 115 Croats and 11 Bosniaks. There are only 15% Bosniaks in the Municipality of Livno and the number of employed Bosniaks in Livno-Bus nearly corresponds to the national structure of the population, although the company is privately owned to 65% and state-owned only to 35%.

VI.5. The workers of Livno-Bus of Bosniak nationality were receiving, throughout the conflict between Croats and Bosniaks, 80 DEM per month and they could enjoy a decent living for this amount, sheltered in their houses while their Croat colleagues were on the front-line. Given this fact, it is not possible even to conceive that there was any discrimination against the applicant after the war in 1996. Moreover, the Agent of the Federation, for purely humanitarian reasons, had made arrangements with the applicant to be reinstated, but he allegedly declined because the post he was allegedly offered did not suit him.

VI.6. At the public hearing the applicant did not allege any act DISCRIMINATING AGAINST HIM ON THE GROUNDS OF NATIONALITY AND WHEN HE REFERRED TO THE NAMES OF DIFFERENT NATIONS HE STATED THAT THIS WAS IRRELEVANT FOR HIM AND THAT WHAT MATTERS TO HIM IS ONLY THAT HE IS A MUSLIM (A MEMBER OF THE ISLAMIC FAITH).

VI.7. On the basis of what has been stated in this chapter no discrimination on the grounds of nationality is possible among persons of the same nationality.

VII. CONCLUSION

VII.1. In view of what has been stated in the decision on the admissibility and merits I submit this separate opinion dissenting from both the conclusions and the remedies of the Chamber.

VII.2. If it had followed from the Chamber's Decision that the Chamber's opinion is that all persons who lost their job during the war, irrespective of whether they were dismissed, placed on the waiting list or not delivered any decision, are entitled to rights as recognized to Mr. Zahirović by the Chamber's decision, I would not have submitted this dissenting opinion.

(signed)
Želimir JUKA

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