



DECISION ON REQUEST FOR REVIEW

Case no. CH/98/617

Pavle LONČAR

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 12 May 2000 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. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Having considered the Second Panel's recommendation;

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

I. FACTS AND COMPLAINTS

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He was an employee of the firm “Unioninvest” and started to work as the branch director of its Frankfurt office as of 1991. On 3 December 1993 the applicant received a fax from the General Director of “Unioninvest” in Sarajevo dismissing him for the reason that he had been causing “negative effects” on the economic development of the firm. An appeal against this decision was allowed to the competent court in Sarajevo within 15 days upon delivery. As it was difficult in those days to send a letter to Sarajevo, the applicant was trying to send a fax through the Frankfurt office, requesting the appeal to be transferred to the competent court in Sarajevo. The Frankfurt office refused to send the appeal of the applicant with the explanation that this was his “private matter”.
2. On 13 September 1995 the labour court in Frankfurt rejected the applicant’s claim that his dismissal be declared unlawful, stating that it was not competent *ratione loci* to decide on the matter.
3. On 9 March 1996, after having returned to Sarajevo, the applicant requested “Unioninvest” to send him a copy of the decision terminating his employment. He never received an answer. On 12 June 1996 the applicant initiated proceedings against “Unioninvest” before the competent court in Sarajevo, requesting that the decision of 3 December 1993 be annulled and “Unioninvest” be ordered to re-employ him. The proceedings before the Municipal Court in Sarajevo are still pending. The applicant stated that 15 hearings have been held in his case. The last hearing of 20 April 1998 was postponed for an indefinite period of time due to the absence of the defendant’s representative.
4. The applicant complained about the “unlawful” termination of his contract with “Unioninvest” and that the court tolerated it. He alleged that he was dismissed on the ground of arbitrary assertions and that the Municipal Court delayed his proceedings unreasonably.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 29 April 1998 and registered on 15 May 1998.
6. On 15 October 1998 the Chamber, sitting as the First Panel, adopted its decision on the admissibility of the case which was dispatched on 18 January 1999. The First Panel declared the application inadmissible. It noted that the dismissal of the applicant took place before 14 December 1995 and concluded that the application was therefore outside the Chamber’s competence *ratione temporis* pursuant to Article VIII(2)(c) of the Agreement.
7. On 22 February 1999 the applicant submitted a request for a review of the decision. In pursuance of Rule 64(1) of the Chamber’s Rules of Procedure the request was considered by the Second Panel, which on 8 May 2000 decided to recommend to the plenary Chamber that the request be accepted. The plenary Chamber considered the request and the Second Panel’s recommendation on 12 May 2000.

III. REQUEST FOR REVIEW

8. In his request the applicant asks the plenary Chamber to review the findings of the First Panel. In particular, he claims that his grievances are of an ongoing nature. He asserts that he was discriminated against on the ground of his Serb origin not only in his right to work but also in his right to a fair hearing within a reasonable time. He therefore alleges that the First Panel wrongly applied the criteria set out in Article VIII(2)(c) of the Agreement in regard to the finding that the events underlying his application were outside the Chamber’s competence *ratione temporis*.

IV. OPINION OF THE SECOND PANEL

9. The Second Panel notes at the outset that the request for review has been lodged one month and four days after the dispatching of the Chamber’s decision on 18 January 1999, while Rule 63(2) of the Rules of Procedure provides that such a request is to be filed “within one month of the date on which the Panel’s reasoned decision is communicated ...”. However, the Panel takes the view that

the time-limit prescribed in Rule 63(2) cannot commence until the decision dispatched has been received by the applicant. The decision was sent by ordinary mail. It is reasonable to assume that the decision only reached the applicant some few days after it was dispatched. Therefore, the Second Panel considers that the request for review has been filed in time.

10. Furthermore, the Second Panel has examined whether (a) the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) if the whole circumstances justify reviewing the decision, as required in Rule 64 of the Rules of Procedure.

11. The applicant has alleged that his working relationship was terminated unlawfully by his employer. He also stated that the Municipal Court in Sarajevo tolerated this conduct through the continued adjournment of the proceedings, which have been pending since 12 June 1996 without a decision having been made. In its decision, the First Panel has not referred to the applicant's complaint concerning his allegation of discrimination and the proceedings before the Municipal Court which seems to raise issues under Article 6 of the European Convention on Human Rights. The Second Panel therefore is of the opinion that the First Panel has failed to correctly assess all aspects of the case, taking into account the Chamber's consistent practice to consider also apparent violations of the Agreement beyond those explicitly complained of by the applicant.

12. The Second Panel also notes that the applicant has directed his application against his employer "Unioninvest". The First Panel has, following the consistent practice of the Chamber, interpreted the application as being directed against one of the parties to the Agreement. However, the Second Panel cannot agree with the designation of Bosnia and Herzegovina as the respondent Party in the present case, considering that the application primarily raises issues within the responsibility of the Federation of Bosnia and Herzegovina.

13. Taken together, these issues raise a serious question affecting the application of the Agreement within the meaning of Rule 64(2)(a) of the Rules of Procedure. Since the grievances of the applicant continue until the present day, the Second Panel further finds that the whole circumstances justify reviewing the decision pursuant to Rule 64(2)(b). Therefore, the Second Panel unanimously recommends that the request for review be accepted.

V. OPINION OF THE PLENARY CHAMBER

14. The plenary Chamber recalls that it shall consider the request for review as well as the recommendation of the Panel, and decide whether to accept the request.

15. The plenary Chamber agrees with the Second Panel, for the reasons stated above, that the request for review meets the conditions required for the Chamber to accept such a request pursuant to Rule 64(2)(a). It also finds that the whole circumstances justify reviewing the decision under Rule 64(2)(b).

VI. CONCLUSION

16. For these reasons, the Chamber, unanimously,

ACCEPTS THE REQUEST FOR REVIEW;

REVOKES THE DECISION TO DECLARE THE APPLICATION INADMISSIBLE; AND

RESTORES THE APPLICATION TO THE CHAMBER'S LIST OF CASES FOR FURTHER CONSIDERATION.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber