DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 March 2001)

Case no. CH/98/617

Pavle LONČAR

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 March 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant, a citizen of Bosnia and Herzegovina of Serb origin, previously worked in the Frankfurt (Germany) office of "Unioninvest Holdings d.d." a company registered in the Federation of Bosnia and Herzegovina. He was dismissed in 1993. In 1996 he initiated proceedings before the courts of the Federation against his dismissal. These proceedings are still pending.

2. The case raises issues primarily under the guarantee of a right to a fair trial within a reasonable time, contained in Article 6 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 29 April 1998 and registered on 15 May 1998.

4. 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, noting that the dismissal of the applicant took place before 14 December 1995. It concluded that the application was therefore outside the Chamber's competence *ratione temporis,* pursuant to Article VIII(2)(c) of the Agreement.

5. 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 recommended 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. It decided to accept the request for review, to revoke the decision of the First Panel of 15 October 1998 declaring the case inadmissible, and to restore the application to the Chamber's list of cases for further consideration.

6. The case was transmitted to the Federation of Bosnia and Herzegovina for its observations on its admissibility and merits, which were received on 16 June 2000. The applicant's reply to these observations, which included a claim for compensation, was received on 4 July 2000. The observations of the Federation on the applicant's claim for compensation were received on 28 July 2000.

7. On 2 November 2000 the applicant made a further written submission to the Chamber, which was sent to the Federation for information.

8. The Chamber considered the admissibility and merits of the application on 6 September 2000 and on 7 March 2001. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. 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 in 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 from delivery. As it was difficult in those days to send a letter to Sarajevo, the applicant attempted to send a fax through the Frankfurt office of Unioninvest, 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".

10. 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.

11. On 9 March 1996, after having returned to Sarajevo, the applicant requested Unioninvest to send him another 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 19 hearings have been held in his case, but that they have been repeatedly postponed, due to the failure of Unioninvest to co-operate with the court. Examples of this include the repeated failure of the representative of Unioninvest to attend the court hearings, and also its failure to provide a copy of its corporate statute, despite being requested to do so by the court. The applicant states that the court has remained passive in the face of this behaviour.

B. Relevant legal provisions

12. Article 434 of the Law on Civil Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77) states that in disputes concerning employment, the Court shall pay special attention to the need to solve such disputes as a matter of urgency. The new Law on Civil Proceedings, in force in the Federation since 11 November 1998, contains the same provision in Article 426 (Official Gazette of the Federation of Bosnia and Herzegovina no. 42/98).

IV. COMPLAINTS

13. The applicant complains of his dismissal by Unioninvest in 1993, claiming that it was motivated by discriminatory reasons, due to the fact that he is of Serb origin. He also complains of the conduct of the proceedings before the Municipal Court I in Sarajevo, claiming that the court has delayed them unreasonably.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

14. The Federation submitted its observations on the admissibility and merits of the case on 16 June 2000.

1. Admissibility

15. It first claims that the applicant did not properly complete the Chamber's application form and that therefore the Chamber should refuse to accept the application on this ground.

16. The Federation also claims that the Chamber is not competent to consider the case *ratione temporis*. This is because the applicant's employment was terminated on 3 December 1993, before the entry into force of the Agreement. It also points out that it cannot be held responsible for the actions of Unioninvest, and therefore the application is also inadmissible *ratione personae*.

17. On the question of the exhaustion of domestic remedies, the Federation claims that the application is inadmissible on the ground that the applicant has not exhausted the domestic remedies available to him. It states that the proceedings he initiated before the Court of First Instance I in Sarajevo are still pending and that as a result his application to the Chamber is premature.

2. Merits

18. On the merits of the case, the Federation claims that there has been no violation of any of the rights of the applicant as guaranteed by the Convention. It claims that the general manner of organisation of the court system in the Federation, in particular the manner of appointment and terms of service of judges, is in accordance with the requirements of Article 6 of the Convention.

Concerning the length of the proceedings before the Federation courts, the agent of the Federation states that this has not been unreasonable and that the applicant is himself to blame for any delay. The agent stated that the applicant did not initiate proceedings before the Municipal Court I until 13 June 1996, two and a half years after the decision of Unioninvest terminating his employment. The agent also pointed out that the Municipal Court I transmitted his complaint to the defendant within two and a half months of receiving it. In addition, on 2 May 1998 the applicant's representative submitted new information concerning his claim, which contributed to the length of the proceedings, as it necessitated the taking of further evidence.

19. The Federation also states that criminal proceedings were instituted against the applicant arising out of his conduct while employed with Unioninvest, and that he was granted an amnesty in respect of these proceedings on 14 December 1999. The Federation claims that this fact caused further complications in the proceedings.

20. In conclusion, the Federation suggests to the Chamber to declare the case inadmissible for non-exhaustion of domestic remedies and as outside the competence of the Chamber *ratione temporis*, or in the alternative, to declare it inadmissible as manifestly ill-founded.

B. The applicant

21. The applicant maintains his complaint. He claims that the delay in the proceedings before the Municipal Court I is due to the improper behaviour of Unioninvest and that the court has tolerated that behaviour. He claims that the case before the Municipal Court I is not complex, but is actually a straightforward one. He refers, by way of example, to the fact that the proceedings were delayed due to the failure of Unioninvest to comply with a request of the court to submit its corporate statute, claiming that it had been destroyed in a fire. He also states that the criminal proceedings against him were unfounded. He claims that he has initiated proceedings against the amnesty decision of 14 December 1999, as he was never convicted of the crime and therefore cannot be granted an amnesty in respect of it.

VI. OPINION OF THE CHAMBER

A. Admissibility

22. Before considering the merits of this case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

23. The applicant complains of his dismissal by Unioninvest in 1993 and also of the conduct of the court proceedings he initiated on 12 June 1996 against that decision before the First Instance Court I in Sarajevo.

24. Concerning the objection of the Federation that the Chamber should refuse to accept the application as the applicant did not fully complete the application form, the Chamber notes that the application submitted by the applicant contained sufficient information to enable the Chamber to understand the nature and substance of the complaint. While it is of course desirable that applicants to the Chamber fully complete the standard application form provided to them, the omission of certain details is not of itself sufficient reason to refuse to accept an application. The Chamber will not therefore refuse to accept the application on this ground.

1. The complaint regarding the applicant's dismissal

25. The Federation objects that the Chamber is not competent *ratione temporis* to consider the claim regarding the applicant's dismissal, as it occurred prior to 14 December 1995, the date of entry into force of the Agreement.

26. The applicant has not submitted any arguments specifically on the question of the admissibility of this part of his complaint.

27. The Chamber held in *Matanović* (CH/96/1, decision on admissibility and merits delivered on 6 August 1997, Decisions on Admissibility and Merits March 1996 – December 1997) that, in accordance with the generally accepted principles of international law, the Agreement cannot be applied retroactively. It follows that the Chamber cannot examine whether the dismissal of the applicant on 3 December 1993 gave rise to any violations of his human rights.

2. The complaint regarding the length of the court proceedings

28. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

29. In the present case the Federation objects to the admissibility of the application on the ground that the applicant has not exhausted the domestic remedies available to him.

30. As noted above, the applicant initiated proceedings before the first-instance court in Sarajevo against his dismissal. These proceedings are still pending. The Federation has not sought to claim that there is any remedy available to the applicant against the failure of the court to decide upon his proceedings and the Chamber for its part is not aware of any such remedy. Accordingly, the Chamber does not consider that there is any effective remedy available to the applicant which he should be required to exhaust.

31. Consequently, the complaint concerning the applicant's dismissal is to be declared inadmissible as incompatible with the Agreement *ratione temporis* and the complaint concerning the length of the applicant's proceedings is to be declared admissible.

B. Merits

32. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party 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 in the Convention.

Article 6 of the Convention

33. Although the applicant did not specifically allege a violation of his rights as guaranteed by Article 6 of the Convention, he complained in general of the conduct of the proceedings before the First Instance Court I, later the Municipal Court I in Sarajevo. Accordingly, the Chamber raised it *proprio motu* when transmitting the case to the Federation for observations on its admissibility and merits. Article 6 of the Convention, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations…, everyone is entitled to a fair and public hearing within a reasonable time …"

34. The Federation's arguments in respect of this provision are set out at paragraphs 18 - 19 above.

35. The Chamber must first consider whether the dismissal of the applicant concerns a "civil right" within the meaning of Article 6 of the Convention. The Chamber notes that it has already held that matters such as those at issue in the present case concern "civil rights" (see, e.g. *Zahirović,* decision on admissibility and merits delivered on 8 July 1999, paragraph 135, Decisions January-July 1999). Article 6 is therefore applicable to the present case.

36. As the Chamber has previously noted, the applicant initiated proceedings before the Municipal Court I on 12 June 1996. These proceedings are still pending. The Chamber must now examine whether this length of time can be considered "reasonable" within the meaning of Article 6 paragraph 1 of the Convention.

37. The Chamber has previously held on a number of occasions that the factors to be taken into account in determining whether the length of civil proceedings has been reasonable or not are as follows: the complexity of the case, the conduct of the applicant and the conduct of the national authorities (see, e.g. case no. CH/98/1171, *Čuturić,* decision on admissibility and merits delivered on 8 October 1999, paragraph 32, Decisions and Reports August-December 1999).

(a) The complexity of the case

38. The Federation claimed that the proceedings were complicated by the fact that there were related criminal proceedings against the applicant (see paragraph 19 above).

39. The Chamber does not consider that such proceedings complicate the proceedings initiated by the applicant, as these relate to a different issue. Moreover, these criminal proceedings were terminated in December 1999, one year and five months ago. That being so the fact that criminal proceedings were previously initiated against the applicant cannot in any case be relied on as justification for the length of time taken by the proceedings since then.

40. According to the information available to the Chamber, the case essentially concerns a dispute over whether the termination of the applicant's employment with Unioninvest was legitimate. It would not appear to raise questions of any considerable factual or legal complexity. The Chamber therefore finds that the case is not a complicated one.

(b) The conduct of the applicant

41. The Federation claimed that the applicant himself contributed to the delay in the proceedings by not instituting proceedings until 1996 and also by lodging a revised claim for compensation during those proceedings.

42. The Chamber notes that the time-period to be taken into account in determining whether the length of the proceedings was reasonable or not starts from the date those proceedings were initiated. Therefore the question of whether the applicant delayed initiating his proceedings is not of relevance for the purposes of determining whether the proceedings before the courts of the Federation have lasted for an unreasonable time.

43. Concerning the claim of the Federation that the applicant contributed to the delay by lodging a revised claim for material compensation on 2 May 1998, the Chamber does consider that this claim may have necessitated the taking of additional evidence. However, the Chamber does not consider that this additional claim is such as to warrant a delay of the nature as has occurred in the present case. In addition, the Federation has not sought to explain what additional evidence the court required and has not sought to explain the steps actually taken to obtain such evidence. The Federation has thus not shown to the Chamber's satisfaction that the applicant's actions actually caused such delay. Moreover, while the Chamber is prepared to accept, as a hypothesis, that the additional request made by the applicant may have lengthened the proceedings to some extent, the additional delay in the proceedings does not appear such that a significant portion of the responsibility for the length of the proceedings should be imputed to the applicant.

(c) the conduct of the national authorities

44. The Chamber notes that, according to the latest information provided to it, there have been 19 hearings held by the court in the applicant's proceedings, but that they have not yet been concluded. The Federation has not put forward any evidence seeking to refute the claims of the applicant concerning the apparent indulgence the court has shown to the conduct of Unioninvest (see paragraph 11 above).

45. Therefore, the apparent reason for this delay is the failure of Unioninvest fully to cooperate with the court. The Chamber considers that the court did not act properly in allowing Unioninvest to act in such a manner. The Chamber considered a similar issue in case no. CH/98/1171 *Čuturić,* (decision on admissibility and merits delivered on 8 October 1999, Decisions August – December

1999). In that case, at paragraph 35, it held that a court faced with apparent non-cooperation by a party to proceedings before it should consider the use of coercive powers at its disposal to obtain such cooperation.

46. The Chamber considers that the conduct of the court has been unreasonable as it has tolerated the lack of cooperation by Unioninvest in the applicant's proceedings.

47. The Chamber also notes, as it did in *Čuturić*, that employment disputes are required, under the relevant national law (see paragraph 12 above), to be treated with priority.

48. In conclusion, the Chamber finds that the length of time the applicant's proceedings have been pending before the court is unreasonable and that the applicant's right to a fair trial within a reasonable time, as guaranteed by paragraph 1 of Article 6 of the Convention, has been violated as a result.

VII. REMEDIES

49. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of the applicant.

50. In the present case, the Chamber finds it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's case currently pending before the Municipal Court I in Sarajevo brought to a conclusion as a matter of urgency, and if possible no later than 31 July 2001.

51. The Chamber notes that the applicant claims the sum of 246,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") in respect of financial loss and expenses that he has incurred due to his dismissal by Unioninvest together with interest. These claims relate to expenses he allegedly incurred in renting office space in Germany, as well as lost salaries. The Federation suggests to the Chamber to reject this claim in its entirety, as in its submission it is not responsible for the damage the applicant allegedly suffered and that in any event the claim is totally unsubstantiated.

. 52. In view of the finding in paragraph 27 above, namely that the applicant's claim in respect of his right to work is inadmissible, the Chamber cannot consider any claims in respect of lost income or other expenses allegedly incurred as a result of his dismissal.

53. However, the Chamber has found the Federation in breach of its obligations under the Agreement with respect to the applicant's right to a fair hearing within a reasonable time. As a result, the applicant has suffered some non-pecuniary damage stemming from the absence of a final decision regarding his employment status. The Chamber accepts that living with such uncertainty for over four years has caused the applicant emotional distress. Therefore, the Chamber considers that the finding of a violation would not of itself provide just and sufficient satisfaction. Deciding on an equitable basis, it awards the applicant 1,000 KM in this respect.

54. In its decision on the claim for compensation of 16 March 1998 in the *Damjanović* case (CH/96/30, Decisions and Reports 1998), the Chamber ordered the payment of simple interest at an annual rate of 4% on compensation for damage paid after the expiry of the time-limit set for that purpose. The award compensation for damage was expressed in German currency and 4% was the legal rate of default interest in Germany at that time. The Chamber considers that it should now award such interest at an annual rate of 10%, which more closely reflects economic reality in Bosnia and Herzegovina. Interest at that rate should be paid as of the date of expiry of the period set in paragraph 50 on the sum awarded in paragraph 53.

VIII. CONCLUSION

55. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible the part of the application relating to the length of the domestic proceedings in the applicant's labour dispute;

2. unanimously, to declare inadmissible the remainder of the application;

3. unanimously, that there has been a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights, the Federation thereby being in breach of Article 1 of the Agreement;

4. by 13 votes to 1 , to order the Federation of Bosnia and Herzegovina, through its authorities, to take all necessary steps to ensure that the Municipal Court I in Sarajevo decides on the applicant's claim as a matter of urgency, and if possible no later than 31 July 2001;

5. unanimously, to reject the applicant's claim for pecuniary damages;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, not later than 31 July 2001, 1,000 Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damage;

7. unanimously, to order that simple interest at an annual rate of 10 per cent will be payable on the sum awarded in conclusion 6 above after the expiry of the period set in this conclusion for the payment of such sums; and

8. unanimously, to order the Federation to report to it no later than 31 July 2001 on the steps taken by it to comply with the above orders.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex Partly dissenting opinion of Mr. Mehmed Deković

ANNEX

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

PARTLY DISSENTING OPINION OF MR. MEHMED DEKOVIĆ

In the Conclusion under paragraph 4 of the Decision in the case no. CH/98/167 of the applicant Pavle Lončar v. the Federation of Bosnia and Herzegovina, the Chamber decided by 13 votes to 1 to order the Federation of Bosnia and Herzegovina, through its authorities, to take all necessary steps to ensure that the Municipal Court I in Sarajevo decides on the applicant's claim as a matter of urgency, and in any event no later than 31 July 2001.

I voted against the conclusion in paragraph 4 for the following reasons:

First of all I consider the conclusion in question to be contradictory as a result of the manner in which it is drafted. Namely, the Chamber has ordered the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the regular Court decides on the applicant's claim (most probably this refers to the complaint) "as a matter of urgency", and after that comes the "request" of the Chamber to finish the case "in any event no later than 31 July 2001". It is completely clear that the second part of the conclusion in question contributes to the loss of value of its first part, the intention of which is to terminate the proceedings before the regular Court "as a matter of urgency", as I proposed during the session of the Chamber. My proposal to order the Federation, through its authorities, to take all necessary steps to ensure that the proceedings relating to the applicant's complaint before the regular Court be terminated as a matter of urgency after the issuance of the Chamber's decision I considered an appropriate one in that it would not further prolong the proceedings before the regular Court, as is done by the conclusion in question. My position is supported by the fact that the regular Court has held as many as 19 hearings. Besides, the time-limit described in the disputed conclusion would give the idea that the length of proceedings before the regular court up to this moment was not reasonable which is contrary to Article 6 paragraph 1 of the European Convention for the reasons stated in paragraphs 38 – 48 of the Decision. Finally, I think that in drafting the disputed conclusion it should have been taken into account that under Article 426 of the Law on Civil Proceedings (OG F BiH no. 42/98) "in civil proceedings, and especially when deciding on hearings and time-limits, the Court shall always take into account the need to bring labour disputes to an urgent conclusion". Accordingly, the Chamber's order in the decision under conclusion 4 should have been drafted in such a way that it follows from it that the clear and clear-cut position that the proceedings before the regular Court should be finalized "as a matter of urgency", and not in such a way as to enable the termination of those proceedings to be unreasonably prolonged.

(signed)
Mehmed Deković