



DECISION ON THE MERITS
(delivered on 6 September 2002)

Case no. CH/98/948

Mile MITROVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 2 September 2002 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. Ulrich GARMS, 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 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of mixed Croat and Serb origin. He was an employee of Elektroprivreda, a socially owned company in Sarajevo, prior to the outbreak of the armed conflict. During the conflict, he was a Commander of a Civil Defence Unit in the Republika Sprska. On 30 March 1996, after the end of the armed conflict, the applicant reported to work. On that day, he was informed that his employment had been terminated, by the decision of his employer of 30 October 1993, on the ground that, without valid justification, he had not reported to work for five consecutive days. The applicant sought legal redress to regain his position, but his civil action has been rejected by the Court of First Instance in Sarajevo on the ground that he was engaged on the side of the aggressor against the Republic of Bosnia and Herzegovina during the armed conflict.

2. The case raises issues with regard to discrimination in the enjoyment of the right to work and related rights as guaranteed by Article 6 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). The application also raises issue under Articles 6 (right to a fair hearing) and 13 (right to an effective remedy) of European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was registered on 14 September 1998. The applicant is represented by Senija Poropat, a lawyer in Sarajevo.

4. On 18 January 1999 the application was transmitted to the Federation of Bosnia and Herzegovina ("the Federation") for its observations on the admissibility and merits of the application under Articles 13 and 14 of the Convention, Articles 6 of the ICESCR and Article 5(e)(i) of the CERD. On 19 March 1999 observations on admissibility and merits were received from the respondent Party.

5. On 16 April 1999 the applicant submitted his observations in reply and a claim for compensation. On 18 June 1999 observations on the compensation claims were received from the respondent Party.

6. On 7 September 1999 the Chamber adopted its decision on the admissibility of the case. The Chamber, after having considered its competence *ratione temporis* and the requirement to exhaust domestic remedies, declared the application admissible. It further found that the case may raise issues within its jurisdiction, in particular discrimination in relation to Articles 6 and 13 of the Convention and Article 6 of the ICESCR.

7. On 22 January 2001 the applicant's representative sent to the Chamber new information regarding the applicant's situation and further details regarding the compensation claims.

8. On 12 February 2001 the Chamber retransmitted the application to the respondent Party under Article 6 of the Convention.

9. On 12 March 2001 the Chamber received the observations of the respondent Party stating its position with respect to admissibility and merits of the alleged violation of Article 6 of the Convention.

10. On 9 April 2001 the Chamber received observations of the applicant concerning the respondent Party's arguments about the factual situation.

11. On 14 March 2002, in response to inquiries from the Chamber, the applicant's representative informed the Chamber of the current status of the applicant.

12. The Chamber deliberated on the merits of the case on 6 June, 5 July and 2 September 2002. On the latter date it adopted the present decision on merits.

III. ESTABLISHMENT OF THE FACTS

13. The applicant is of mixed Croat and Serb origin. He became an employee of “Elektroprivreda”, then a socially owned company in Sarajevo, on 18 September 1972. Upon its creation in 1994, the company came, *de facto*, under the responsibility and control of the Federation of Bosnia and Herzegovina. This situation was recognised and legalised by the Decree on Performing Powers and Obligations by Bodies of the Federation of Bosnia and Herzegovina in Business Companies on the Basis of State Capital (Official Gazette of the Federation of Bosnia and Herzegovina— hereinafter “OG FBiH”—nos. 8/00, 40/00, 43/00, 4/01, 5/01, 26/01 and 35/01). The applicant alleges that he had been on sick leave from 26 May 1989 to 13 May 1992. He alleges that the last time he reported to work was on 26 May 1992, and because of the armed conflict he could not contact his employer regarding the extension of his sick leave. He states that he was unable to report to work during the armed conflict because he lived in Grbavica, which was controlled by Bosnian Serb forces.

14. During the armed conflict the applicant was a commander of a civil defence unit in the Republika Sprska. He attests that in this position he was distributing humanitarian aid to the population of Grbavica. The respondent Party disputes this presentation of the facts and considers that the civil defence units were an “integral part of the Serb Army”.

15. The applicant’s employment was terminated by a decision of Elektroprivreda dated 30 October 1993. The decision stated that the ground for termination of his contract was that without valid justification he had not reported to work for five consecutive days.

16. The applicant reported to work on 30 March 1996 and, at that time, he learned that a decision terminating his employment had been issued on 30 October 1993. On the same day he submitted an objection to the company against the decision on his termination. His objection was dismissed, and on 18 June 1996, the company’s Commission for Appeals confirmed the original decision.

17. On 10 July 1996, the applicant commenced proceedings before the Court of First Instance II in Sarajevo against the decision terminating his employment. He considered the cessation of his contract as unlawful on the ground that it was impossible for him to go to work due to the armed conflict. On 2 June 1997 the Court rejected the claim, not because he had failed to report to work for five consecutive days without valid justification, but because he had been a member of the civil defence unit of the Republika Sprska during the armed conflict. This decision was based on Article 15 of the Decree with Force of Law on Employment (“Law on Working Relations”) which provides for the termination of a person’s employment if he or she is “engaged on the side of the aggressor against the Republic of Bosnia and Herzegovina” (Official Gazette of the Republic of Bosnia and Herzegovina— hereinafter “OG R BiH”—no. 21/92 of 23 November 1992). The Court further found that according to Article 129(a) of the Decree with the Force of Law on Defence (OG R BiH nos. 4/92, 9/92 and 19/92), members of the civil defence unit are at the same level as members of the army in relation to their rights and obligations.

18. On 30 June 1997, the applicant submitted an appeal to the Cantonal Court of Sarajevo against the decision of the First Instance Court of 2 June 1997. The applicant argued that the Court of First Instance wrongly applied Article 15 of the Law on Working Relations, and that this Law, in itself, is inconsistent with the Constitution of Bosnia and Herzegovina. Further, the applicant argued that because the state of war had ceased, the Law should not have been applied. On 27 January 1998, the Cantonal Court of Sarajevo rejected this appeal on the grounds that 1) the applicant was on the side of the aggressor during the armed conflict; and 2) that he was absent from work for 5 consecutive days without valid justification.

19. The Law on Labour entered into force on 5 November 1999. On 27 December 1999, pursuant to Article 143 of that Law, the applicant sought reinstatement into his employment. The employer responded on 2 February 2000, and informed the applicant that, according to its information, the applicant has not met the conditions prescribed by the Law because the company alleged that he had found another job. Accordingly, it provided the applicant with the opportunity to correct that information by providing his employment record card and pension and disability fund list within five days.

20. On 7 February 2000 the applicant provided the requested documentation to his employer, establishing that he had not, in fact, found another job. He has received no response from his employer since then.

21. On 20 May 2000, as the employer failed to regulate the applicant's employment by the deadline established in the Law on Labour, the applicant's representative filed a complaint with the employer. No response has been received to this complaint.

22. On 20 September 2000 the applicant's representative filed a complaint with the Municipal Court II in Sarajevo. In his complaint, the applicant stated that the employer failed to regulate his labour status in accordance with Article 143 of the Law on Labour. He asked for a procedural decision reinstating him. On 25 September 2000 the Court issued a decision on suspension of the proceedings and to relinquish the plaintiff's claim to the Cantonal Commission for Implementation of Article 143 as this Commission is the competent body to pursue it. No decision has been received since then.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on Fundamental Rights in Working Relations

23. The Law on Fundamental Rights in Working Relations of the Socialist Federal Republic of Yugoslavia ("SFRY") (Official Gazette of SFRY—hereinafter "OG SFRY"—nos. 60/89 and 42/90) was taken over as a law of the Republic of Bosnia and Herzegovina (OG RBiH no. 2/92).

Article 23 paragraph 2 of the Law provides that:

"A written decision on the realisation of a worker's individual rights, obligations and responsibilities shall be delivered to the worker obligatorily."

Article 75 of the Law provides for the termination of a working relationship. Paragraph 2(3) of that Article reads as follows:

"The working relationship ends without the consent of the employee,... if he or she stayed away from work for five consecutive days without good cause".

B. The Law on Working Relations

24. The Decree with Force of Law on Working Relations during the State of War or Immediate Threat of War (OG RBiH no. 21/92 of 23 November 1992) entered into force on the day of its publication. It was later confirmed by the Assembly of the Republic (OG RBiH no. 13/94 of 9 June 1994) and applied as the Law on Working Relations. It remained in force until 5 November 1999.

The Law contained the following relevant provisions:

Article 10

"An employee can be sent on unpaid leave due to his or her inability to come to work in the following cases:

If he or she lives or if his or her working place is on occupied territory or on territory where fighting is taking place.

[...]

Unpaid leave can last until the termination of the circumstances mentioned above, if the employee demonstrates, within 15 days after the termination of these circumstances, that he or she was not able to come to work earlier. During the unpaid leave all rights and obligations of the employee under the employment are suspended."

Article 15

“The employment is terminated, if, while under a compulsory work order, the employee stayed away from work for more than 20 consecutive working days without good cause, or if he or she took the side of the aggressor against the Republic of Bosnia and Herzegovina.”

C. The Law on Labour

25. The Law on Labour entered into force on 5 November 1999 (OG FBiH no. 43/99). The Law was amended by the Law on Amendments to the Law on Labour (OG FBiH no. 32/00), which entered into force on 7 September 2000.

Article 5 of the Law on Labour provides that:

“(1) A person seeking employment, as well as a person who is employed, shall not be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, ethnic or social origin, financial situation, birth or any other circumstance, membership or non-membership in a political party, membership or non-membership in a trade union, and physical or mental impairment in respect of recruitment, training, promotion, terms and conditions of employment, cancellation of the labour contract or other issues arising out of labour relations.

“(2) Paragraph 1 of this Article shall not exclude the following differences:

1. which are made in good faith based upon requirements of particular a job;
2. which are made in good faith based on incapability of a person to perform tasks required for a particular job or to undertake training required, provided that the employer or person securing professional training has made reasonable efforts to adjust the job or the training which such person is on, or to provide suitable alternative employment or training, if possible;
3. activities that have as an objective the improvement of the position of persons who are in an unfavourable economic, social, educational or physical position.

“(3) In the case of a breach of paragraphs 1 and 2 of this Article:

1. Persons whose rights are violated may submit a complaint before the competent court in relation to the infringement of their rights;
2. If the complainant presents obvious evidence of discrimination prohibited by this Article, the defendant is obliged to present evidence that such differential treatment was not made on the discriminatory grounds;
3. If the court finds that the allegations of the plaintiff are well-founded, it shall order the application of the provisions of this Article, including employment, reinstatement to a previous position or restoration of all rights arising out of the labour contract.”

D. The Decree with Force of Law on the Defence

26. The Decree with Force of Law on the Defence (OG RBiH nos. 4/92, 9/92 and 19/92) entered into forced on 20 May 1992.

Its Article 129(a) provides as follows:

“During the state of war, the members of the civil defence (of headquarters and units) shall be equal to the members of the military forces in every aspect with regard to their rights and obligations.

The conditions and manner of realisation of rights and obligations under paragraph 1 of this Article shall be determined in more detailed way by the regulation of the Government.”

V. COMPLAINTS

27. The applicant alleges that he was discriminated against on the basis of his mixed Croat and Serb origin in his right to work as guaranteed, *inter alia*, by Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The applicant alleges also that he was discriminated against because of his national origin in his right to a fair hearing as guaranteed by Article 6 paragraph 1 of the Convention and his right to an effective remedy before a national authority as guaranteed by Article 13 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

28. The respondent Party, in its observations of 12 March 2001, argues that the application should be rejected as inadmissible. The Federation alleges that the applicant has an effective remedy available to him prescribed in Article 143a of the Law on Amendments to the Law on Labour.

29. With respect to Article 6 of the Convention, the Federation considers that it has not been breached. The Court of First Instance and the Cantonal Court issued their decisions within six months after the introduction of the application. Concerning the application of Article 143 of the Law on Labour, the respondent Party states that the Municipal Court II in Sarajevo had transmitted the file to the Cantonal Commission for Implementation of Article 143 in less than six months. Therefore, the Federation has complied with the reasonable time criterion, as stipulated by Article 6 of the Convention.

30. Furthermore, according to Article 362(1) of the Law on Civil Procedure (OG SFRY nos. 4/77, 36/77, 36/80 and 69/82, the same provision is contained in Article 344 of the new Law on Civil Procedure of the Federation, OG FBiH no. 42/98), "the Second Instance Court should decide on the appeal, as a rule without a hearing". Paragraph 2 of the Article provides that "when the Second Instance Court Panel finds that, in order to correctly establish the facts, it is necessary to repeat presentation of already presented evidence, before the Second Instance Court, it shall schedule a hearing...". The respondent Party notes that the applicant did not appeal on the basis that the facts were incorrectly established but on the basis of "wrongful application of substantial law". Therefore, the Federation considers that there was no reason for a public hearing before the Cantonal Court in Sarajevo.

31. Finally, with respect to the applicant's allegation that the "courts only formally carried out the proceedings", the respondent Party considers this statement "offensive and inappropriate", "absurd and irrelevant".

32. Regarding Article 13 of the Convention, the respondent Party, in its observations of 18 March 1999, argues that the applicant has recourse before some domestic organs and he has chosen not to use them. The remedies that the applicant should have used are not specified.

33. With respect to Article 14 of the Convention, the Federation, in its observations of 18 March 1999, states that the Law on Labour is applied to all citizens without any kind of discrimination. In the concrete case, the applicant was not treated differently due to his place of residence or national origin. It further emphasises the fact that Article 14 does not stand alone, *i.e.*, it must be applied in conjunction with another right protected by the Convention.

34. Concerning Article 5(e)(i) of the CERD, the respondent Party, in its observations of 18 March 1999, claims that the Law on Working Relations was known to everybody. Therefore, by not appearing at work for five working days, the applicant accepted the consequences. Furthermore, Article 15 of the Law on Working Relations has been applied without discrimination against the applicant, and it has not been breached. Finally, the Federation considers that the argument of the applicant, that he could not report to his job after 26 May 1992, is not valid, because the siege of Sarajevo started long before that date. Therefore, according to the Federation, the applicant has not offered any valid reason for not reporting to work.

35. Regarding the potential violation of Article 6 of the ICESCR, the Federation did not offer any possible explanation to the Chamber.

B. The applicant

36. The applicant alleges that the decisions of the domestic courts have discriminated against him on the basis of his national origin and place of residence.

37. The applicant also argues that Article 6 of the Convention has been violated, firstly because the “courts were not efficient and obviously not impartial”. Further, he claims that, in accordance with the law, the domestic courts must deal with labour disputes urgently and may order provisional measures.

38. He considers that Article 15 of the Law on Working Relations has been wrongly applied. According to the applicant, that Law was rendered ineffective by the cessation of the state of war and the imminent threat of war, by the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, and by the adoption of the Constitution of Bosnia and Herzegovina. Further, the court failed to establish the applicant’s participation in the armed conflict.

39. Finally, the applicant argues that his employment was only effectively terminated from the time when he received notice of its termination, *i.e.*, on 24 October 1996.

VII. OPINION OF THE CHAMBER

40. 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.

41. The Chamber has held in the case of *Hermas* (case no. CH/97/45, decision on admissibility and merits of 16 January 1998, paragraph 118, Decisions and Reports 1998) that the prohibition on discrimination is a central objective of the General Framework Agreement to which the Chamber must attach particular importance. Under Article II(2)(b) of the Agreement, the Chamber has jurisdiction to consider alleged or apparent discrimination in the enjoyment of the rights and freedoms provided for in, *inter alia*, the ICESCR and the CERD.

A. Discrimination in the enjoyment of the right to work and free choice of employment and the right to fair hearing, as guaranteed by Article 6 of the ICESCR and Article 6 of the Convention

42. Article 6(1) of the ICESCR, as far as relevant, reads as follows:

“The States Parties to the present Covenant recognise 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.”

43. Article 6 paragraph 1 of the Convention provides, as far as relevant, as follows:

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

1. Impugned acts and omissions

44. The Chamber notes that the working relationship between the applicant and his employer had existed since September 1972 and the failure to re-employ him occurred at the end of the armed conflict. The Chamber notes furthermore that the applicant's employer, Elektroprivreda, is a state-owned company.

45. Moreover, Elektroprivreda failed to apply Article 10 of the Law on Working Relations, which would have required it to put its employee on unpaid leave, instead of terminating the applicant's employment.

46. Further, acts possibly attracting the responsibility of the Federation under the Agreement include the decisions of the courts upholding the termination of the applicant's employment with Elektroprivreda.

47. All these acts constitute an interference with the applicant's rights under either Article 6(1) of the ICESCR or Article 6 of the Convention, as well as a potential failure of the Federation to secure protection of those rights.

2. Differential treatment and possible justification

48. In order to determine whether the applicant has been discriminated against, the Chamber must first determine whether the applicant was treated differently from others in the same or a relevantly similar situation. 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 (see case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraph 120, Decisions January-July 1999 and case no. 97/50, *Rajić*, decision on admissibility and merits of 3 April 2000, paragraph 53, Decisions January-July 2000).

49. There is a particular onus on the respondent Party to justify otherwise prohibited differential treatment based on any ground mentioned in Article I(14) of the Agreement, such as race, colour and ethnic or national origin. In previous cases, the Chamber has taken a similar standpoint (see, *e.g.*, the above-mentioned *Hermas* decision, paragraphs 86 *et seq.*; see also the above-mentioned *Zahirović* decision, paragraphs 121 *et seq.*).

50. The applicant argues that he was dismissed and not re-employed due to his national origin. The Federation bases its arguments on Article 15 of the Law on Working Relations, which, *inter alia*, provided that the employment relationship is terminated if the employee is engaged on the side of the aggressor against the Republic of Bosnia and Herzegovina. The respondent Party further considers that this Article is applicable to every citizen and therefore not discriminatory.

51. The Chamber recalls that the decision on the applicant's termination of his working relations entered into force with its delivery to him on 30 March 1996.

52. The Chamber notes that the employer's decision to terminate the applicant's contract was based on his unjustified absence from work for five consecutive days under the Law on Fundamental Rights in Working Relations. However, the Chamber also notes that the company did not take into account the fact that the applicant lived on the other side of the frontline and consequently failed to apply Article 10 of the Law on Working Relations.

53. It was the Court of First Instance II in Sarajevo that applied Article 15 of the Law on Working Relations. In its judgment of 2 June 1997, the Court stated that the applicant, by becoming a member of the Civil Defence Unit of the Republika Srpska, "put himself on the side of the aggressor". On appeal, the Sarajevo Cantonal Court confirmed the first instance decision and reasserted that the applicant's employment was legally terminated due to his participation in the armed conflict "on the side of the aggressor".

54. Regarding the judicial decisions, the Chamber considers that the First Instance Court and the Cantonal Court stepped outside their competence. The proceedings submitted before them only concerned the legality of the employer's decision to terminate the applicant's employment. They did not permit any re-qualification of the grounds underlying the decision. However, the courts refused the applicant's claim under Article 10 of the Law on Working Relations and decided that the termination of the contract was, in any case, justified due to the participation of the applicant in the conflict on "the side of the aggressor". The conduct of the courts reveals their intent to solidify the termination of the applicant's employment, instead of deciding the issue before them. Moreover, as the ground for the applicant's termination relied on by the courts in practice applies almost exclusively to persons of non-Bosniak origin, the Chamber concludes that this finding was discriminatory on grounds of national and ethnic origin.

55. In the light of all these considerations, the Chamber finds it established that the applicant has been subjected to differential treatment due to his national and ethnic origin. No legitimate aims have been put forward to justify this differential treatment. It therefore constituted discrimination in relation to both the enjoyment of the right to work, and the enjoyment of the right to a fair hearing.

56. The Chamber therefore concludes that the applicant has been discriminated against on the grounds of national and ethnic origin in his enjoyment of the right to work and of the right to fair hearing under Article 6 of the Convention and Article 6 of the ICESCR and that the Federation of Bosnia and Herzegovina is responsible for this violation.

B. Article 13 of the Convention and Article 5(e)(i) of the CERD

57. Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by person acting in an official capacity."

58. Article 5(e)(i) of the CERD provides, as far as relevant for the present case:

"In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

"(e) Economic, social and cultural rights, in particular:

- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration."

59. The Chamber, considering that it has found that the applicant has been discriminated against in the enjoyment of his rights protected by Article 6 of the Convention and Article 6 of the ICESCR, decides that it is not necessary for it separately to examine the case under Article 13 of the Convention and with respect to discrimination in the enjoyment of the rights protected by Article 5(e)(i) of the CERD.

VIII. REMEDIES

60. Under Article XI(b) of the Agreement, the Chamber must next address the question what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found, including monetary relief.

61. In his last request for compensation, the applicant asks the Chamber to order as follows: 1) that he be reinstated into his job; 2) that he be paid salaries in the amount of 445 Convertible Marks (*Konvertibilnih Maraka*, "KM") per month, retroactive to 30 March 1996, in the total amount of 24,920 KM at the date of the claim; 3) that his social contributions be paid and he be credited for years of experience from 30 March 1996 until his return to work; 4) that he be reimbursed for legal fees in the amount of 824 KM (including 18 KM for his initial complaint, 225 KM for his appeal against the judgment, 360 KM for costs incurred before the Chamber, 30 KM for drafting his objection, 30 KM for his complaint of 20 June 2001, and 12% expenditure tax on the total amount).

62. The Federation submits that the applicant could have requested such compensation in the domestic courts. As for legal costs, it considers the request completely ill-founded on the grounds that the applicant has not provided the basis for the legal costs and these expenses could also have been compensated by the domestic courts. The respondent Party finds the compensation claim, as a whole, excessive and unsubstantiated.

63. The Chamber has found the Federation in breach of its obligations under the Agreement by discriminating against the applicant on the basis of national and ethnic origin in the enjoyment of his rights under Article 6 of the ICESCR and Article 6 of the Convention. Therefore, the Chamber finds it appropriate to order the applicant's reinstatement to his previous employment and to award the applicant pecuniary compensation.

64. The Chamber will 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 appropriate to his former position and equal to those enjoyed by other employees.

65. The Chamber finds it appropriate to award the applicant, by way of compensation, a lump sum of 10,000 KM, covering both non-pecuniary and pecuniary damage, including the lost salaries and contributions. 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 reinstated in his position with the company.

66. The applicant shall also receive at the end of each month 20 KM for each day until he is offered the possibility to resume his work on terms compatible with his former position and equally enjoyed by others. Additionally, the Chamber will award 10 per cent interest per annum on the sums referred to in the preceding paragraphs. The interest shall be paid as of the date of the expiry of the one-month time period set for the implementation of the present decision until the date of settlement in full.

67. As regards the applicant's compensation claims beyond the awarded sums, the Chamber considers the means ordered adequate and capable to ensure the respect for the applicant's rights and to remedy the established violations. Accordingly, the Chamber rejects the remainder of the claims and refrains from awarding any further pecuniary or non-pecuniary compensation.

IX. CONCLUSION

68. For these reasons, the Chamber decides,

1. by 12 votes to 2, that the applicant has been discriminated against in the enjoyment of his right to work and of his right to a fair hearing as guaranteed by Articles 6(1) of the International Covenant on Economic, Social and Cultural Rights and Article 6 of the European Convention on

Human Rights, respectively, in conjunction with Article II(2)(b) of the Human Rights Agreement, the Federation of Bosnia and Herzegovina thereby being in violation of Article I of the Agreement;

2. by 12 votes to 2, that in view of the finding of discrimination in the enjoyment of the rights protected by Article 6(1) of the ICESCR and Article 6 of the Convention, it is not necessary separately to examine the applicant's complaint under Article 13 of the Convention and Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination;

3. by 12 votes to 2, to order the Federation to take all necessary steps to ensure that the applicant is immediately offered the possibility to resume his work on terms compatible with his former position and equally enjoyed by others;

4. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to pay to the applicant not later than 6 October 2002 the amount of 10,000 KM (ten thousand Convertible Marks) by way of compensation for pecuniary and non-pecuniary damages;

5. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to pay to the applicant at the end of each month KM 20 for each day, starting on 7 October 2002 and not including Saturdays and Sundays, until he is offered the possibility to resume his work on terms compatible with his former position and equally enjoyed by others;

6. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to pay the applicant simple interest at a rate of 10 (ten) per cent per annum over the sums stated in conclusions nos. 4 and 5 or any unpaid portion thereof; and

7. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to report to it by 6 November 2002 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex I Dissenting opinion of Mr. Hasan Balić
Annex II Dissenting opinion of Mr. Mehmed Deković

ANNEX I

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Hasan Balić.

DISSENTING OPINION OF MR. HASAN BALIĆ

Why do I disagree with the decision of the Chamber? There are many factual and legal reasons. They may be summarised as follows:

It is not unknown to the Chamber that the 1992 – 1995 war in Bosnia and Herzegovina has been responsible for everything. In order to successfully defend itself under international and national laws, a country under attack is obliged to organise its own defence, and in accordance with the United Nations Charter, to call upon other countries for help. Bosnia and Herzegovina acted in this way. It issued a Decree, which later became the Law on Working Relations, and its Article 15 provides for the compulsory termination of employment for an employee who took the side of the aggressor against the Republic of Bosnia and Herzegovina (see reasoning given in paragraph 17 of the decision). It is not disputed that this condition was fulfilled.

Another possibility to terminate employment was an unjustified absence from work for 5 working days (see reasoning given in paragraph 18 of the decision).

The judicial organs in the Federation of Bosnia and Herzegovina had this in mind while deciding on the applicant's employment in question and rejecting his request.

Upon carefully analysing the decisions of the national courts (which are of multiethnic composition only in the Federation), the period of issuance of those decisions, and the respect given to procedures set forth in national regulations, then the Chamber's conclusion no. 1 in paragraph 68 raises doubts and thereby calls into question the other conclusions of the decision, with which I also do not agree. Therefore, I respectfully dissent.

(signed)
Hasan Balić

ANNEX II

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Mehmed Deković,

DISSENTING OPINION OF MR. MEHMED DEKOVIĆ

In the conclusion of the decision (see conclusion no. 1 of paragraph 68) most of the judges of the Chamber have decided that the applicant was discriminated against in the enjoyment of his right to work and to a fair hearing. However, in my opinion, such conclusion of the Chamber was not based on the law and it does not give acceptable reasons. It is true, as stated in paragraph 59 of the decision, that "in the light of all these considerations, the Chamber finds it established that the applicant has been subjected to differential treatment due to his national and ethnic origin. ... It therefore constituted discrimination in relation to both the enjoyment of the right to work, and the enjoyment of the right to a fair hearing". But has the applicant been discriminated against due to his national and ethnic origin? This is a fundamental issue, which should have been thoroughly discussed in the decision, but it has not been. Namely, the discussion covers only whether the applicant has been treated differentially from persons of another nationality in the same or similar situation. Here, that is not the case. It is generally known that, during the war, in situations where the legal requirements of Article 15 of the Law on Working Relations (Official Gazette of the Republic of Bosnia and Herzegovina no. 21/92) had been fulfilled, companies, and among them the applicant's company, issued procedural decisions terminating working relations regardless of the national or ethnic origin of the workers. In the concrete case, the applicant had been absent from work without any valid justification, and besides that, he, as the Commander of Civil Defence, held the status of a member of the armed forces of the Republika Srpska. Therefore, It appears that the procedural decision of his company terminating his working relations, as well as the decisions of the first instance and appellate courts, are valid and based on the law. The right of the applicant to a fair hearing has not been violated since the proceedings before the regular courts were completed in a proper time period and in accordance with regulations applicable when the applicant's working relations were terminated.

In addition to the above-mentioned arguments, I am of the opinion that the respondent Party justifiably objected that the applicant had at his disposal a legal remedy under Article 143a of the Law on Labor (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/99 and 32/00). It is true, according to the mentioned legal provision, that the applicant used this legal remedy, but this legal remedy has not been exhausted since the decision of the competent Cantonal Commission has not been issued. However, during the issuance of this decision, the Chamber neglected this fact, and it did not provide reasons why the stated objection was not accepted, although it is important for the issuance of a correct decision.

For the above-stated reasons, I think that in this present case the applicant's rights have not been violated as concluded in the Chamber's decision. Therefore, I respectfully dissent.

(signed)
Mehmed Deković