



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 4 July 2003)

Case no. CH/99/2743

Jasminka SARAČ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 3 June 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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. Since 1970, the applicant, who is of Bosniak origin, has been employed by the “Bosna” company (which subsequently changed its name to “Euroservis d.o.o.”) (the “employer”) in Livno. When the conflict between the Croats and Bosniaks in Livno broke out in July 1993, she was told by the employer’s management not to come to work, and subsequently her employment was terminated by the employer’s decision. After the cessation of the armed conflict the applicant initiated proceedings requesting to be reinstated into her working position, but was not successful. The court proceedings were finished to her detriment, and the Cantonal Commission for implementation of Article 143 of the Law on Labour also rejected her request for establishment of her legal and working status. The applicant alleges a violation of her right to a fair trial and an effective remedy, her right to work and the right to be free from discrimination in the enjoyment of those rights. She also alleges violations of her right to respect for her private and family life and her right to peaceful enjoyment of her possessions.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 3 August 1999 and registered on the same date.
3. On 10 January 2003, the Chamber decided to transmit the case to the respondent Party for written observations on the admissibility and merits under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to Convention.
4. On 17 March 2003, the respondent Party submitted its written observations on admissibility and merits. On 7 April 2003, the applicant submitted her observations in reply.
5. On 16 May 2003, the respondent Party submitted its additional observations. On 2 and 11 June 2003, the applicant submitted her additional observations.
6. The Chamber considered the admissibility and merits of the case on 10 January, 9 May, and 3 June 2003. The Chamber adopted the present decision on the latter date.

III. FACTS

7. Since 1970, the applicant, who is of Bosniak origin, has been employed by the “Bosna” company in Livno (which subsequently changed its name to “Euroservis d.o.o.”) (the “employer”).
8. On 21 July 1993, a conflict broke out between the Croats and the Bosniaks in Livno and the company’s management directed the women working for the company to go home “until they see what was going to happen further on”. The applicant alleges that she had telephone contacts with the company’s director during the course of the next few days, asking him what to do, but he said he did not know. A few days later one of the people in charge came to her with a request to hand over her keys and take her things. She surrendered her keys. After that, she had no contacts with the company, because she did not dare contacting them due to the “general insecurity”.
9. On 18 August 1993, the employer issued a decision on cessation of the applicant’s employment as of 29 July 1993. The reason stated in the decision for the cessation of her employment was her not appearing at work for 5 consecutive days. The aforementioned procedural decision was delivered to the applicant by mail service on 28 August 1993. The procedural decision does not contain any statement of remedies available against it, but it was stated that the procedural decision was final. The applicant did not appeal against the aforementioned procedural decision. She alleges it was not possible to do that due to the then ethnic conflicts in Livno.
10. On 23 March 1998, the applicant filed an action against her employer before the Municipal Court in Livno, requesting the court to establish that she had an employment relationship with her

employer. The Municipal Court in Livno issued a judgement on 8 March 1999, refusing the applicant's request as ill-founded. She filed an appeal against that judgement.

11. On 1 December 1999, pursuant to Article 143 of the Law on Labour (see paragraph 19 below), the applicant filed a request to her employer for establishment of her legal and working status. The employer has never responded to her request.

12. On 11 May 2000, the Cantonal Court in Livno quashed the first instance judgement and remitted the case for renewed proceedings before the Municipal Court in Livno. In the new proceedings, on 15 May 2002, the applicant changed her request and requested the annulment of the procedural decision on cessation of her employment dated 18 August 1993. On 5 June 2002, the Municipal Court in Livno issued a procedural decision rejecting the applicant's action as filed out of time. The court states in the reasoning of the procedural decision that the applicant missed all preclusive time limits for filing her action as provided by the Law. The applicant also appealed against this procedural decision.

13. On 27 August 2002, the Cantonal Court in Livno refused the applicant's appeal and upheld the first instance procedural decision. Against that judgement the applicant filed an extraordinary remedy – request for review. On 9 April 2003, the Supreme Court issued a judgement rejecting the applicant's request for review as ill-founded.

14. On 30 November 2000, after the Law on Amendments to the Law on Labour (see paragraph 21 below) came into force, the applicant filed an appeal to the Cantonal Commission for Implementation of Article 143 of the Law on Labour of Canton 10 in Tomislavgrad (hereinafter: the "Cantonal Commission"), requesting the establishment of her labour and legal status. As the Commission had not issued any procedural decision, on 27 March 2002, the applicant filed an appeal because of "silence of the administration" to the Federal Commission for Implementation of Article 143 of the Labour Law (hereinafter: the "Federal Commission"). On 24 April 2002, the Cantonal Commission transferred the case file to the Federal Commission. However, the Federal Commission immediately remitted the case back to the Cantonal Commission, where it was pending until April 2003. On 23 April 2003, the Cantonal Commission issued a procedural decision rejecting the applicant's request as ill-founded. The applicant did not appeal against this decision and it became final.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on Fundamental Rights in Labour Relations

15. The Law on Fundamental Rights in Labour Relations of the Socialist Federal Republic of Yugoslavia ("SFRY") (Official Gazette of the SFRY nos. 60/89 and 42/90) was taken over as a law of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RbiH" – no. 2/92). It provides in relevant part:

Article 23

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

Article 75

"(2) The worker's employment ceases without his consent:

3. if he stayed away from his work for five consecutive days without a good cause..."

Article 80

"(1) A worker... has the right to appeal against the decisions which [competent organ of the employer] issues on his rights, obligations and responsibilities."

“(2) An appeal...can be filed to the [competent body of the employer] within 15 days from the day when the decision ...was delivered to him...”

Article 83

“(1) A worker who is not satisfied with the final decision of the competent body in the organization, or if that organ fails to issue a decision within 30 days from the day the request or appeal is lodged, has the right to seek protection of his right before competent court within the next 15 days.”

B. Law on Labour Relations

16. The Law on Labour Relations was published in the Official Gazette of the Republic of Bosnia and Herzegovina (hereinafter “OG R BiH”) 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 Republic (OG R BiH, no. 13/94 of 9 June 1994). It 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

17. The Law on Labour (Official Gazette of the Federation of Bosnia and Herzegovina -hereinafter “OG FBiH”- 43/99) entered into force on 5 November 1999. The Law was amended by the Law on Amendments to the Law on Labour (OG FBiH no. 32/00) with the particular effect that certain new provisions, including Articles 143a, 143b, and 143c, were added and entered into force on 7 September 2000.

18. Article 5 of the Law on Labour provides that:

“(1) A person seeking employment, as well as a person who becomes employed, shall not be discriminated against based on 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 employments.

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

1. which are made in good faith based upon requirements of a particular 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 unfavourable economic, social, educational or physical position.

“(3) In the case of 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 discriminatory grounds;
3. If the court finds the complaint to be well-founded, it shall make such order as it deems necessary to ensure compliance with this Article, including an order for employment, reinstatement, or the provision or restoration of any right arising from the contract of employment.”

19. Article 143 of the Law on Labour provides that:

“(1) An employee who is on the waiting list on the effective date of this Law shall retain that status no longer than six months from the effective date of this Law (5 May 2000), unless the employer invites the employee to work before the expiry of this deadline.

“(2) An employee who was employed on 31 December 1991 and who, within three months from the effective date of this Law (5 February 2000), addressed in written form or directly the employer for the purpose of establishing the legal and working status – and had not accepted employment from another employer during this period, shall also be considered an employee on the waiting list.

“(3) While on the waiting list, the employee shall be entitled to compensation in the amount specified by the employer.

“(4) If a waiting list employee referred to in paragraphs 1 and 2 of this Article is not requested to return to work within the deadline referred to in paragraph 1 of this Article, his or her employment shall be terminated with a right to severance pay, which shall be established according to the average monthly salary paid at the level of the Federation on the date of entry of this Law into force, as published by the Federal Statistics Institute.

“(5) The severance pay referred to in paragraph 4 of this Article shall be paid to the employee for the total length of service (experience) and shall be established on the basis of average salary referred to in paragraph 4 of this Article multiplied by the following coefficients:

Experience	Coefficient
- up to 5 years	1.33
- 5 to 10 years	2.00
- 10 to 20 years	2.66
- more than 20 years	3.00.
[...]	

“(8) If the employee’s employment is terminated in terms of paragraph 4 of this Article, the employer may not employ another employee with the same qualifications or educational background within one year, except the person referred to in paragraphs 1 and 2 of this Article, if that person is unemployed.”

20. Article 145 of the Law on Labour provides that:

“Proceedings to exercise and protect the rights of employees, which were instituted before this Law has come into effect, shall be completed according to the regulations applicable on the territory of the Federation before the effective date of this Law, if this is more favourable for the employees.”

21. In the Law on Amendments to the Law on Labour, which entered into force on 7 September 2000, Article 103 was amended and new Article 143a and 143c were added to the Law on Labour as follows:

Article 103

“(3) An employee can file an action before the competent court on account of a violation of his labour related right within one year from the day when the decision which violates his right was delivered to him or from the day he learned of the violation of his right derived from employment.”

Article 143a

“(1) An employee, believing, that his employer violated his right arising from paragraphs 1 and 2 of Article 143, may within 90 days from the entry into force of the Law on Amendments to the Law on Labour, introduce a claim to the Cantonal Commission for Implementation of Article 143 of the Law on Labour (hereinafter the “Cantonal Commission”), established by the Cantonal Minister competent for Labour Affairs (hereinafter the “Cantonal Minister”).

“(2) The Federal Commission for Implementation of Article 143 (hereinafter the “Federal Commission”), which is established by the Federal Minister, shall decide on the complaints against the procedural decisions of the Cantonal Commission.

“(3) In the case when the Cantonal Commission is not performing tasks for which it is established, the Federal Commission shall take over the jurisdiction of the Cantonal Commission.

“(4) If a procedure pertaining to the rights of the employee under paragraphs 1 and 2 of Article 143 has been instituted before a court, this court shall refer the case to the Cantonal Commission, and issue a decision on suspension of procedure.”

Article 143c

“Decisions of the Federal/Cantonal Commission shall be:

1. final and subject to the court’s review in accordance with the law;
2. legally based;
3. transmitted to the applicant within 7 days.”

22. The Law on Amendments to the Law on Labour further added the following Articles 52, 53, and 54:

Article 52

“This Law shall not affect contracts and payments done between an employer and his employee in the application of Article 143 of the Law on Labour prior to the date of entry into force of this Law (*i.e.* 7 September 2000).

Article 53

“This Law shall not affect final decisions issued by the court in the period prior to the entry into force of this Law (7 September 2000) in the application of Article 143 of the Law on Labour.”

Article 54

“Procedures of realisation and protection of employees’ rights initiated prior to the entry into force of this Law shall be completed according to the regulations applicable on the territory of the Federation prior to the entry into force of this Law (7 September 2000), if it is more favourable to the employee, with the exception of Article 143 of the Law on Labour.”

D. Law on Civil Proceedings

23. Article 426 of the Law on Civil Proceedings (OG FBiH no. 42/98) states that, in disputes concerning employment, the Court shall pay special attention to the need to resolve such disputes as a matter of urgency.

V. COMPLAINTS

24. The applicant complains of violation of her right to work and is invoking Articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights. She alleges that she was discriminated against on the ground of her national origin in the enjoyment of her above-mentioned rights. The applicant also alleges violations of her right to a fair hearing within a reasonable time by an independent and impartial tribunal under Article 6 of the Convention, the right to respect for her

private and family life under Article 8 of the Convention, the right to an effective remedy under Article 13 of the Convention and her right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

25. As to the admissibility, the respondent Party considers the application inadmissible *ratione temporis*, because the applicant's employment was terminated before the Agreement entered into force. Further, it stresses that the applicant did not directly allege that she was discriminated against in the enjoyment of her right to work and related rights. Hence, the respondent Party proposes that the application should be declared inadmissible *ratione materiae*.

26. The respondent Party also points out that the applicant did not exhaust all the domestic remedies, because she had received the decision on termination of her employment on 28 August 1993, but she did not file an objection to her employer, nor did she initiate court proceedings within the time limit prescribed by the laws. The applicant initiated court proceedings only on 23 March 1998, although she has been in Livno all the time. For these reasons the respondent Party considers the application inadmissible for non-exhaustion of domestic remedies.

27. In relation to the proceedings before the Cantonal Commission for Implementation of Article 143 of the Law on Labour, the respondent Party stresses that the applicant does not have the status of an employee on the waiting list and therefore Article 143 of the Law on Labour is not applicable in her case.

28. As to the fact that the Federal Commission remitted the case back to the Cantonal Commission after the case had been transferred to it, due to the applicant's appeal for "silence of the administration", the respondent Party alleges that the Federal Commission considered that the Cantonal Commission will act more efficiently (gather the evidence and hear the parties). It also alleges that if the applicant is not satisfied with the decision of the Cantonal Commission, then she can appeal to the Federal Commission.

29. As to the merits, the respondent Party considers the application ill-founded. In relation to the applicant's allegations of a violation of Article 6 of the Convention, it alleges that the Federation courts are independent and impartial, established by the law, and the applicant did not contest any of these facts in her application.

30. As to the length of proceedings, the respondent Party considers it to be reasonable. Moreover, the applicant initiated civil proceedings in 1998, and only on 15 May 2002, the applicant altered her request according to the regulations. The courts decided on the applicant's requests in a reasonable time. As to the length of proceedings before the Commission, the respondent Party does not consider it unreasonable.

31. In relation to Article 13, the respondent Party notices that the applicant filed an action before the court, and the courts decided on her request. Also the applicant did not use the available remedies, *i.e.* she neither objected to the employer, nor filed an action within the time limit, which means that there could be no violation of her right under Article 13. As to the allegation of a violation of the right under Article 1 of Protocol No. 1, the respondent Party alleges that the applicant's employment was terminated on 29 July 1993, and she has not received a salary and was not paid the contributions for pension and disability fund, because she has not worked with her employer since that day.

B. The applicant

32. The applicant strongly contests the arguments of the respondent Party. In her reply the applicant alleges that she, as well as all the other Bosniaks in Livno, was discriminated against in the enjoyment of her rights, because in 1993 and later they were maltreated, held in the improvised camps, robbed and intimidated by the Croat majority in Livno. In these days, only Bosniaks were fired. Their lives were endangered, and they did not dare to seek the protection of their rights. Further, she states that some kind of courts existed, but they were in the service of the Croat Republic of Herceg-Bosna whose regulations only applied, instead of the regulations of the Republic of Bosnia and Herzegovina. She stresses that an employee of Croat origin was hired and works on her job now.

33. Further, the applicant alleges that the employer's decision on termination of her employment was marked as final, and there was no note on legal remedies against it. She also stresses that, even if she had known that she could have initiated court proceedings, she would not have dared to do that earlier than in 1998, because of the general uncertainty and danger to the Bosniak population.

34. The applicant strongly contests the respondent Party's allegations concerning the independence and impartiality of the courts. She points out that the Minister of Justice of Canton 10, the President, and the former President and the judge of the Municipal Court in Livno were removed by a decision of the High Representative. She also considers the length of the proceedings before the domestic organs, which have lasted 5 years, to be unreasonable.

VII. OPINION OF THE CHAMBER

A. Admissibility

35. 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. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept [...]. In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted [...] (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Regarding the claim related to the termination of the employment

36. The Chamber notes that the applicant complains of discrimination in the enjoyment of her right to work due to the termination of her employment. However, the Chamber observes that the employment of the applicant ceased on 29 July 1993, and that the employer's decision on her dismissal was delivered to the applicant on 28 August 1993. Hence, the alleged violations concerning the applicant's right to work 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., case no. CH/96/1 *Matanović v. The Republika Srpska*, decision on the admissibility of 13 September 1996, Decisions 1996-1997).

37. Therefore, pursuant to Article VIII(2)(c) of the Agreement, the Chamber declares inadmissible as incompatible *ratione temporis* with the Agreement the parts of the application related to the termination of the applicant's employment and discrimination in the enjoyment of her right to work and related rights.

2. Regarding the claim of a violation of Article 6 of the Convention

38. The Chamber notes that the applicant complains that the proceedings before the courts in Livno were unfair and that the courts were not impartial. However she did not raise these complaints either in form or in substance before the domestic courts and in relation to this part of the application she has therefore not exhausted domestic remedies.

39. As to the length of the proceedings in the courts, the Chamber notes that the applicant initiated proceedings on 23 December 1998, requesting the court to establish that she continued to be employed. This action was rejected by the Municipal Court in Livno on 8 March 1999, and on 11 May 2000, the Municipal Court's judgement was quashed by the Cantonal Court on appeal. Further, the Chamber notes that in the new proceedings, only on 15 May 2002 the applicant changed her claim requesting the annulment of the procedural decision on termination of her employment. The Municipal Court issued a new judgement on 5 June 2002, and the Cantonal Court in Livno, acting upon the applicant's appeal, issued a judgement on 27 August 2002.

40. In these circumstances the Chamber does not note any *prima facie* violation of the right to a fair hearing within a reasonable time. Regarding the length of proceedings before the Federation courts and considering the complexity of the issue, and the conduct of the applicant, the Chamber considers that the applicant's claim was solved within a reasonable time and that the courts showed due diligence in solving the matter. Accordingly, the parts of the application, in regard to the length of proceedings before the domestic courts is inadmissible as manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

41. However, concerning the proceedings before the Cantonal and Federal Commission, the Chamber observes the lack of activity of the mentioned organs, which raises issues with regard to the right to a fair hearing within a reasonable time. Therefore, the Chamber declares this part of the application admissible.

3. Regarding the claim of a violation of Article 8 of the Convention

42. As to the complaint of a violation of the applicant's right to respect for her private and family life under Article 8 of the Convention, the Chamber notes that the applicant has failed to substantiate her allegations. Neither is it apparent from the facts of the case that the applicant has in fact been the victim of a violation of the rights guaranteed under Article 8 of the Convention. Since there is no evidence of a violation, it follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement.

4. Regarding the claim of a violation of Article 1 of Protocol No. 1 to the Convention

43. As to the applicant's claim of a violation of her right to peaceful enjoyment of her possessions, the Chamber notes that the Municipal Court in Livno, by its final judgement, rejected the applicant's request for annulment of the employer's decision on terminating her employment. Therefore the applicant has not been employed since 1993 and the legal consequence of the employer's and the court's decisions is that she had no right to receive a salary and to be paid the contributions to the pension and disability fund.

44. Furthermore, if it had been established that the applicant had the status of an employee on the waiting list, then she would have been entitled to compensation for the period while she was on the waiting list and severance pay. However, the Cantonal Commission by its decision of 23 April 2003 rejected her claim. The applicant did not appeal against this decision, and therefore, it became final and binding. Hence, the applicant's claim was rejected by the final decision of the competent organ and she has no right to the compensation and severance pay. Accordingly, the applicant's claim of a violation of Article 1 of Protocol No. 1 to the Convention is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

5. Conclusion as to admissibility

45. The Chamber further finds that no other grounds for declaring the case inadmissible have been established. Accordingly, the Chamber declares admissible the part of the application concerning the alleged violation of Article 6 of the Convention with regard to the length of proceedings before the Cantonal and Federal Commission and alleged violation of Article 13 of the Convention. The Chamber declares inadmissible the remainder of the applicant's complaints.

B. Merits

46. Under Article XI of the Agreement, the Chamber must next address the question of 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.

1. Complaint under Article 6 of the Convention

47. The applicant complains about the length of the proceedings before the Cantonal and Federal Commissions. The Chamber will now consider the allegation that there has been a violation of Article 6 of the Convention in that the applicant's case has not been determined within a reasonable time. The relevant part of Article 6 paragraph 1 provides as follows:

"In the determination of his civil rights and obligations [...], everyone is entitled to a fair ... hearing within a reasonable time [...]"

48. The Chamber has therefore to decide whether Article 6 paragraph 1 is applicable in the present case and, if so, whether the criterion of a "reasonable time" appearing in that Article was respected in the proceedings concerned.

a) Determination of the civil character of the proceedings

49. The Chamber observes that the proceedings before the Commission upon the applicant's appeal concerned the applicant's claim that she had the status of an employee on the waiting list. If it had been established that the applicant had the status claimed, then she would have had the right to compensation for the time she was on the waiting list, as well as the right to severance pay, which is a right deriving from termination of employment.

50. The respondent Party states that the applicant does not have the status of an employee on the waiting list because her employment ceased on 29 August 1993. Therefore Article 143 of the Law on Labour is not applicable in her case and the Commissions for Implementation of Article 143 of the Law on Labour are not competent in her case. The Federation, accordingly, considers that there is no violation of the applicant's right to a fair hearing within a reasonable time within the meaning of Article 6 of the Convention.

51. Article 6(1) requires there to be a dispute over a right and for this right to be of a civil nature. The European Court of Human Rights in its constant jurisprudence has held that Article 6(1) is always applicable when the outcome of the proceedings is decisive for private law rights and obligations (see, e.g., Eur. Court HR, *Ringeisen v. Austria*, judgement of 16 July 1971, Series A no. 13, paragraph 94; *Tre Traktörer Aktiebolag v. Sweden*, judgement of 7 July 1989, Series A no. 159, paragraph 41).

52. The Chamber notes that the Law on Labour provides that the only competent organ for establishing whether the applicant had the status requested was the Cantonal Commission. A decision of the Cantonal Commission could be appealed before the Federal Commission. According to domestic regulations in determining the above-mentioned rights, the applicant had no possibility to go to the court or any other organ, until the proceedings before the Commission were finished. Therefore, in the present case, the Chamber finds that there was a dispute before the Cantonal Commission in Tomislavgrad and the Federal Commission relating to the applicant's monetary claims

resulting from termination of employment, and that the outcome of the proceedings had a decisive effect on the applicant's civil rights and obligations.

53. Furthermore, the Supreme Court of the Federation of Bosnia and Herzegovina, in its decision no. U-388/01, delivered on 12 December 2001, held that the decisions of the Cantonal and Federal Commissions do not have the legal nature of administrative acts. In its opinion, the Supreme Court stated that the Commissions are not organs that conduct proceedings under the laws regarding administrative proceedings, but they are *sui generis* bodies unique to the field of employment. Therefore, their final decisions are not subject to judicial review under regular administrative dispute procedures, which are limited to review of administrative acts. Extraordinary remedies cannot be filed against the Commissions' decisions because they can only be filed against effective judicial decisions. Commission decisions should, however, be subject to review by competent regular courts subject to the laws on civil procedure.

54. In these circumstances, the Chamber considers that the "right" claimed by the applicant before the Cantonal and Federal Commissions is a "civil right". Therefore proceedings before these organs must comply with the requirements of Article 6(1) of the Convention. Consequently, the Chamber considers that Article 6 of the Convention is applicable in this case.

b) Length of the proceedings

55. Despite the fact that the Cantonal Commission rejected the applicant's request as ill-founded, the applicant had the right that her claim be decided within a reasonable time. The first step in establishing the reasonableness of the length of the proceedings is to determine the period of time to be considered.

56. The proceedings before the Cantonal Commission in Tomislavgrad were initiated on 30 November 2000. As the Cantonal Commission had not issued a decision within one year and 4 months, the applicant filed an appeal to the Federal Commission, due to "silence of the administration". The Federal Commission refused to deal with the case and immediately (in April 2002) remitted the case back to the Cantonal Commission. The Cantonal Commission issued its decision only on 23 April 2003. In summary, the proceedings have lasted 2 years and 5 months, due to the fact that the Cantonal Commission had not taken action to solve the case, and the Federal Commission refused to take over the jurisdiction of the Cantonal Commission, despite the provision of Article 143a(3) of the Law on Labour (see paragraph 21 above).

57. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998; Eur. Court HR, *Rajčević v. Croatia*, judgment of 23 July 2002, paragraph 36).

58. The Chamber notes that the issue in the applicant's case is whether she had the status of an employee on the waiting list. The Chamber cannot find that this was a particularly complicated issue, particularly in light of the fact that the only matters to be determined in the present case are simple questions of whether the applicant was employed on 31 December 1991, whether she requested her employer to be reinstated into her working and legal status within the time-limit prescribed by the law and whether she accepted employment from another employer in the meantime (see paragraph 19 above). Nor can it be argued that the law is particularly complicated on this point.

59. According to information obtained by the Organization for Security and Co-operation in Europe (OSCE), the Cantonal Commission in Tomislavgrad is composed of five lawyers, appointed by different Municipalities and one President. The President is working part time, the remaining lawyers are working one day a week, on Wednesdays, when they regularly meet and jointly take decisions. Though the deadline for filing a complaint expired in December 2000, the Commission is still receiving cases forwarded from the court, according to Article 145 of the Law on Labour, which states that labour disputes before the court may be forwarded to the Commission. There are 3,638 complaints submitted to the Commission and 296 have received a decision: ninety-two from 1 January to 13

February 2003. Forty-five cases have been appealed to the Federal Commission. One decision has been taken by the Federal Commission, which has confirmed a decision issued by the first instance body. Further, the work of all the Cantonal Commissions was impeded by a lack of support, financial and technical, lack of staff and lack of any guidance from the relevant Ministry.

60. In the present case, the length of time to be considered already amounts to 2 years and 5 months (from the date when the request was filed until the Commission's decision was issued). The Chamber observes that there was a lack of activity by the Cantonal Commission in Tomislavgrad while the applicant's case was pending before it. Even after the case had been transferred back to it from the Federal Commission, the Cantonal Commission apparently did nothing, until April 2003, in order to solve the applicant's request. The Chamber considers this inaction of the Cantonal Commission as the main reason for delay in the proceedings and the respondent Party is solely responsible for it. The Chamber is aware of the difficulties that the Commission has met in its work (see paragraph 59 above), but it finds the respondent Party responsible for that, because the Federation did not organise the work of the Commission in a more efficient way.

61. Furthermore, the Federal Commission refused to take over the competence of the Cantonal Commission and solve the case by itself, although according to Article 143a(3) of the Law on Labour it is clearly obliged to do so. Although, the proceedings before the Commission do not have the character of administrative proceedings according to the opinion of the Supreme Court (see paragraph 53 above), when the case was transferred to the Federal Commission because the applicant appealed due to "silence of the administration", that was a clear sign to the Federal Commission that the Cantonal Commission in Tomislavgrad did not comply with its duties prescribed by the law. Therefore, the Federal Commission could and should have taken over the competence of the Cantonal Commission in Tomislavgrad and solved the case itself. The respondent Party has argued that this conduct of the Federal Commission was justified because the Cantonal Commission would act more efficiently in solving the case (see paragraph 28 above). However, the Chamber considers that in the light of the clear provision of Article 143a(3) on the one hand, and of the total inaction of the Cantonal Commission on the other hand, the refusal of the Federal Commission is not justified. This is all the more so since the Cantonal Commission did not deal with the applicant's case after it was returned to it (in April 2002) until April 2003.

62. Further, the Chamber finds that there is no indication that the applicant has in any way contributed to the delay of the proceedings. On the contrary, the applicant has made use of all the possible remedies when faced with the inaction of the Cantonal Commission and tried to urge a conclusion of the proceedings, but to no avail.

63. Having considered all these elements, the Chamber finds that the length of the proceedings has been unreasonable and that the respondent Party is responsible for this.

64. The Chamber therefore finds a violation of Article 6 paragraph 1 of the Convention with regard to the right to reasonable time aspect.

2. Complaint under Article 13 of the Convention

65. The Chamber finds that in light of its finding of a violation of the rights provided for in Article 6 of the Convention, there is no need to examine the applicant's complaint of a violation of her right to an effective remedy under Article 13 of the Convention.

VIII. REMEDIES

66. 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 an applicant.

67. The applicant requests reinstatement into her employment and adequate compensation for lost salaries.

68. The Chamber notes that it has found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention. However, the Chamber has not found discrimination in the enjoyment of the right to work, nor has it found a violation of her rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

69. The Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to have her case decided before the Cantonal Commission.

70. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 1000 Convertible Marks (*Konvertibilnih Maraka*) in recognition of her suffering as a result of her inability to have her case decided within a reasonable time.

71. The Chamber further awards simple interest at an annual rate of 10% as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

72. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible under Articles 6 and 13 of the European Convention on Human Rights the part of the application relating to the length of the domestic proceedings in the applicant's case before the Cantonal Commission;

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 of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that it is not necessary to examine the applicant's complaint also under Article 13 of the Convention;

5. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant, not later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 1000 Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

CH/99/2743

7. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure 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 First Panel