DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 October 2003)

Case no. CH/99/1757

Đurđica SEKULIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 October 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
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. The applicant, who is of Serb origin, was employed by the Željezničko Građevinsko Preduzeće ("ŽGP", Railway Construction Company) in Sarajevo. The applicant complains that during the war she was put on the waiting list and later, after the war, her employment was terminated ex lege due to the employer's decision not to invite her to work. In 1998 the applicant initiated court proceedings requesting annulment of the employer's decisions putting her on the waiting list, and later terminating her employment. The procedure seems to be still pending before the Supreme Court of the Federation of Bosnia and Herzegovina. 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.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 23 March 1999 and registered on the same day.

3. On 10 November 1999 the Chamber transmitted the application to the Federation under Article 6 of the Convention and discrimination in the right to work as guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination.

4. On 7 January 2000 the Federation submitted its observations on admissibility and merits. The applicant's lawyer responded to these observations on 9 February 2000.

5. The respondent Party submitted further observations on 20 March, 13 April and 29 October 2001, 9 January 2002 and 24 June 2003. The applicant submitted her observations in reply on 9 February, 18 May, 15 and 20 June and 4 August 2000, 5 June and 11 December 2001, 1 February 2002 and 20 June and 3 July 2003.

6. The Chamber considered the admissibility and merits of the case on 2 November 1999, 9 September 2000 and 2 July , 4 September and 7 October 2003. It adopted the present decision on the latter date.

III. FACTS

7. The facts of the case as they appear from the submissions of the Parties and the documents in the case-file may be summarised as follows.

8. The applicant was an employee of the ŽGP in Sarajevo. On 19 October 1992 she received a decision issued by the Crisis Management of the ŽGP putting her on the waiting list. The applicant apparently stayed in Sarajevo during the war.

9. After the cessation of the armed conflict the applicant was not invited to work. The applicant claims that she has approached on several occasions, orally and in writing, the management of the ŽGP requesting reinstatement into her pre-war position. However, they failed to respond.

10. On 8 January 1998 the applicant initiated a court proceeding before the Municipal Court I in Sarajevo against ŽGP requesting the annulment of the decision putting her on the waiting list. At the beginning, several hearings were scheduled but no representative of the employer came to the hearings. The applicant's representative requested the court to issue a default judgement.

11. On 16 November 1998 the court issued a decision rejecting the request of the applicant's lawyer to issue a default judgement. In its decision the court stated that it could not grant the judgement in default because the defendant had "involved itself in the discussion and contested the claim". This, according to the Article 314 of the Law on Civil Proceedings, is enough to prevent a judgement in default, despite the continuing failure of the defendant to appear. The applicant appealed against this decision, but the Cantonal Court in Sarajevo rejected the applicant's appeal.

12. After the trial before the Municipal Court I in Sarajevo continued the applicant's lawyer requested the court to issue a partial judgement in default. On 10 November 1999 the court rejected this request.

13. During the proceedings before the court the applicant claimed that she was discriminated against on the ground of her national origin, because the employer invited to work employees from another organisational unit, who were of Bosniak origin. The employer, who has later started to appear at the hearings, contested that the applicant was discriminated against, claiming that no person has been hired for the applicant's position. It also argued that out of approximately 63 employees placed on the waiting list, the great majority, 50 of them, were of Bosniak origin. Several witnesses were heard during the proceedings in order to establish whether the applicant was discriminated against. The witnesses stated that workers from other organisational units were invited to work after the transformation of the ŽGP. However, from their statements it can not be clearly concluded whether other employees of Bosniak origin obtained the applicant's position or not.

14. On 1 February 2000 the applicant signed a new contract with her employer in accordance with Article 142 of the Law on Labour. In Article 3 of the contract it was stipulated that the applicant was an employee on the waiting list when the Law on Labour entered into force, and that her working status would be solved according to Article 143 of the Law. The applicant alleges that she was forced to sign this contract although she suspected that Article 3 of that contract is to her detriment. On 28 April 2000 ŽGP issued a procedural decision terminating the applicant's employment as allowed by Article 143(1) of the Law on Labour because she was not offered a position within 6 months since the entry into force of the law.

15. On 15 June 2000 the applicant filed a new action to the Municipal Court I in Sarajevo requesting the annulment of the decision on terminating her employment. Apparently, this claim was joined with the action filed on 8 January 1998 for joint decision.

16. On 16 March 2001 the court suspended proceedings and referred the case to the Cantonal Commission for Implementation of Article 143 of the Law on Labour. On 26 March 2001 the applicant appealed against this decision to the Cantonal Court in Sarajevo. She contested the application of Article 143 to her case. The applicant claimed that her employment situation should have been solved in application of the earlier law as allowed by Article 145 of the Law on Labour. On 25 October 2001 the Cantonal Court in Sarajevo issued a procedural decision rejecting the applicant's appeal. On 4 January 2002 the applicant filed a request for review (revizija) against this decision before the Supreme Court of the Federation of BiH. The applicant alleges that she was informed that the proceedings upon the request for review are still pending before the Supreme Court, and that the case has not yet been assigned to a judge. Due to the fact that the case file is at the Supreme Court, the case could not be transferred to the Cantonal Commission until the Supreme Court issues its decision on the request for review.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on Fundamental Rights in Labour Relations

17. 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."

B. Law on Labour Relations

18. The Law on Labour Relations was published in the Official Gazette of the Republic of Bosnia and Herzegovina (hereinafter "OG RBiH") no. 21/92 of 23 November 1992. It was passed during the state of war as a Decree with force of law, and was later confirmed by the Assembly of the Republic (OG RBiH, no. 13/94 of 9 June 1994). It contained the following relevant provisions:

> Article 7:
>
> "An employee whose work becomes temporarily unnecessary due to a reduced amount of work during the state of war or in case of immediate danger of war may be put on waiting list no longer than until the cessation of these circumstances.
>
> An employee on the waiting list shall be entitled to monetary compensation in the amount defined by the director's or the employer's decision in accordance with material assets of the company or other legal person, i.e. the employer...
>
> 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."

C. The Law on Labour

19. 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.

20. 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."

21. Article 142 of the Law on Labour provides that:

"(1)The employers are obliged to offer the employee a new contract on labour in accordance with this law, within three months form the date of entering this force in force.

(2)The employee who is not offered a new contract…stays in employment….

(3)The contract described in paragraph 1 can not be less favourable than the conditions under which the employment started, i.e. the conditions under which the relations between the employer end the employee has been set until the contract described in paragraph 1 is concluded, unless that issues are not differently provided by the provisions of this Law."

22. 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."

23. 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."

24. 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."

25. 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."

26. The Supreme Court of the Federation of Bosnia and Herzegovina, in its decision no. U-388/01, delivered on 12 December 2001, has 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 the 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.

D. Law on Civil Proceedings

27. Article 314 of the Law on Civil Proceedings (OG FBiH no. 42/98) provides the conditions for issuance of a default judgement:

> Article 314.
>
> When the defendant …does not come to the first hearing…, the judgement adopting the [plaintiff's] claim (the default judgement) will be issued, if the following conditions were met:
>
> 1. if the defendant was properly summoned;
> 2. if the plaintiff requests issuance of the default judgement;
> 3. if the defendant did not contest the claim in written submission;
> 4. if the well-foundedness of the claim follows from the facts stated in the action;
>
> ….

28. Article 426 of the Law 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

29. The applicant alleges violations of her rights under Articles 6, 13 and 14 of the Convention and under Article II(2)(b) of the Agreement in conjunction with the enjoyment of the right to work provided in Article 5(e)(i) of the International Convention on Elimination of All Forms of Racial Discrimination.

VI. SUBMISSIONS OF THE PARTIES

A. The Respondent Party

30. The respondent Party considers the application inadmissible on the ground of failure to exhaust the domestic remedies, as well as *ratione temporis*.

31. As to the merits the respondent Party strongly contests the applicant's allegation of discrimination. The applicant was put on the waiting list on 19 October 1992. Further, on 28 October 1999 the Managing Board of the employer put 180 employees, including the applicant, on the waiting list due to the lack of business activity. Further, the respondent Party alleges that there was no differential treatment of the applicant as compared to the other employees on the ground of her national origin, stressing that no person has been hired by the applicant's employer to obtain her position or a position requiring her qualifications. The respondent Party claims that the applicant's allegations on that issue are not supported by arguments and that as respondent Party it can not give reasons justifying something that did not happen.

32. As to the alleged violation of Article 6 of the Convention, the Federation asserts that the court scheduled hearings on a regular basis and the dispute concerned a very complex issue. The Federation submits that the delays in the proceedings were caused by the conduct of the applicant's lawyer. According to the respondent Party, the applicant's lawyer took an arbitrary view in all the cases that she represents before the Chamber that the courts of the respondent Party are "inefficient" and "biased" in order to justify her failures in the representation. As examples of the applicant's lawyer allegedly causing delay by incompetence, the respondent Party mentions her request set forth at the fifth hearing that the court issue a judgement by default, as well as her request, made after her appeal had been rejected, that the court issue a partial judgement by default.

B. The applicant

33. The applicant contests the respondent Party's allegation that she was not discriminated against in the enjoyment of her right to work. She alleges that she was not offered to work after the war, although she requested it from the employer. Instead, the employer gave her job to the workers of another organisational unit, who were of Bosniak origin. Further, the applicant alleges that she had no choice but to sign the contract of 1 February 2000, although she suspected that "on the basis of Article 3 of the contract followed the final ethnic cleansing".

34. The applicant alleges that transferring her case to the Cantonal Commission can not remedy violation of her rights because "these commissions have never reinstated any employee into his work, nor have they paid the compensation to any employee". The applicant considers that her case has to be solved according to Article 145 of the Law on labour, i.e. by application of the old law.

35. The applicant considers that she proved that she was discriminated against, but the court did not want to deal with that problem and transferred the case to the Cantonal Commission. She also complains of the fact that the Supreme Court has not, as of to date, assigned her case upon request for review to a specific judge.

36. The applicant claims compensation for pecuniary and non-pecuniary damage, as well as for the cost of the proceedings.

VII. OPINION OF THE CHAMBER

A. Admissibility

37. 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. Competence *ratione temporis*

38. The Chamber will first address the question to what extent it is competent *ratione temporis* to consider this case, bearing in mind that the respondent Party objects, as to the admissibility, that the issues raised in the application are outside the competence *ratione temporis* of the Chamber.

39. The Chamber notes that some of the alleged violations occurred before the entry into force of the Agreement on 14 December 1995. In accordance with generally accepted principles of international law, the Agreement cannot be applied retroactively. It is thus outside the competence of the Chamber *ratione temporis* to decide whether events occurring before the entry into force of the Agreement gave rise to violations of human rights (see, e.g., *Matanović v. The Republika Srpska,* Case No. CH/96/1, decision on the admissibility of 13 September 1996, Decisions 1996-1997).

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

41. The Chamber notes that the applicant was put on the waiting list prior to the entry into force of the Agreement on 14 December 1995. This status continued after cessation of the armed conflict.

The applicant has never been offered an opportunity to come back to her work. Therefore, the applicant's grievance in respect of her inability to go back to work relates to a situation which has continued after 14 December 1995. To this extent, the situation therefore falls within the Chamber's competence *ratione temporis*.

42. The Chamber is also competent *ratione temporis* to examine any omission on the part of authorities for which the Federation is responsible under the Agreement, in so far as such omission has occurred or continued after 14 December 1995.

2. Requirement to exhaust effective domestic remedies

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

44. The respondent Party alleges that the applicant did not exhaust all the domestic remedies since the case is still pending before the domestic courts.

45. The Chamber recalls that the applicant filed a civil action before the Municipal Court I in Sarajevo in 1998 requesting the annulment of the decision putting her on the waiting list, and later, in 2000, she requested the annulment of the employer's decision terminating her labour relation, as well. Since then, this court held several hearings and finally in 2001 the court referred the applicant's case to the Cantonal Commission. The Cantonal Court confirmed this decision and it became valid.

46. The Cantonal Commission, to which the applicant's case has been referred, cannot grant the applicant the one relief relevant to her case and annul the employer's decision terminating her employment. In these circumstances, the Chamber finds that the applicant can not be required, for the purposes of Article VIII(2)(a) of the Agreement, to further await the outcome of the proceedings before Commissions and Courts of the respondent Party.

3. With respect to discrimination claim and access to court

47. The applicant complains that she was discriminated against in the enjoyment of her right to work. She also complains of the Municipal and Cantonal Courts' decisions transferring her case to the Cantonal Commission, because the Cantonal Commission cannot order reinstatement into her employment. The applicant argues that, if her case is transferred to the Cantonal Commission, her claim of discrimination cannot be determined. In that way her right to access to court would be violated. However, the Chamber notes that the applicant filed a request for review to the Supreme Court of the Federation of Bosnia and Herzegovina against the Municipal and Cantonal Courts' decisions suspending proceedings upon her discrimination claim. The Chamber, further, notes that the Supreme Court has the competence to quash the first and second instance courts' decisions and order the courts to determine the applicant's discrimination claim. Therefore, the Chamber notes that the applicant's complaints are premature as the proceedings are still pending before the Supreme Court. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible on the ground of failure to exhaust domestic remedies insofar as it relates to the discrimination claim and the alleged violation of the right to access to court.

4. Conclusion as to admissibility

48. The Chamber concludes that the application is admissible insofar as the applicant complains of violations of her rights to a fair hearing within a reasonable time and an effective remedy under Articles 6 and 13 of the Convention. The Chamber declares the remainder of the application inadmissible.

B. Merits

49. 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

50. The applicant complains about the length of the proceedings before domestic courts as well as of a violation of her right to access to a court. 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 by an independent and impartial tribunal established by law[...]"

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

a) Determination of the civil character of the proceedings

52. The Chamber recalls that in its constant jurisprudence it has considered that disputes relating to private employment relations concern "civil rights and obligations". The Chamber further notes that this point has not been put at issue by the parties. Therefore, the Chamber considers that the "right" claimed by the applicant before the domestic courts is a "civil right" within the meaning of Article 6 paragraph 1 of the Convention. Consequently, the Chamber considers that Article 6 of the Convention is applicable in this case.

b) Length of the proceedings

53. The Chamber notes that the proceedings before the Municipal Court I in Sarajevo, initiated by the applicant on 8 January 1998, were concluded on 16 March 2001 when the court issued a procedural decision suspending the court proceedings and referred case to the Cantonal Commission for the Implementation of Article 143 of the Law on Labour. The applicant appealed against this decision, but on 25 October 2001 the Cantonal Court in Sarajevo rejected her appeal. The case is currently registered and pending before the Supreme Court of the Federation of BiH, upon the request for review filed by the applicant.

54. When assessing the length of proceedings for the purposes of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case, the conduct of the applicant and the authorities and the matter at stake for the applicant ((*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, *Rajcevic v. Croatia*, judgment of 23 July 2002, paragraph 36).

55. The issue in the applicant's case is whether the employer's decisions putting her on the waiting list and later terminating her employment were in accordance with the law. The courts should also have determined whether the applicant was discriminated against by her employer on the ground of her ethnic origin when she was not invited to work after the cessation of the armed conflict. The Chamber cannot find that the issues presented are of a particularly complex nature.

56. The respondent Party alleges that the length of the proceedings is primarily a consequence of the conduct of the applicant's lawyer and of other external elements (see paragraph 32 above).

57. The Chamber is aware that the applicant through her lawyer contributed to the delay of the procedure and that her requests for issuance of the default judgement, although the conditions provided for by the law were not met, might have caused some further delay in the civil proceedings.

However, this action of the applicant's lawyer has influenced the length of the proceedings for only several months. The Chamber finds these elements do not explain why it required more than three years of proceedings to issue a first decision in the case, having in mind that this decision is only of procedural character, because it only suspended proceedings. Moreover, the case is now pending before the Supreme Court upon request for review. The request for review was filed in January 2002 but the case, apparently, has not yet been assigned to a specific judge. On the other hand, the case could not be transferred to the Cantonal Commission until the Supreme Court decides on the request for review. Although the request for review (revizija) is an extraordinary remedy according to domestic law, in practice, the proceedings before the Supreme Court prevent this particular case from being transferred to the Cantonal Commission until the Supreme Court decides upon this remedy. Thus, the delay in the proceedings before Supreme Court significantly contributed to the length of the proceedings in total.

58. The Chamber also notes that an employee who considers that she was discriminated against and that her employment was later wrongly terminated has an important personal interest in a speedy outcome of the dispute and in securing a judicial decision on the lawfulness of this measure. The Chamber finds therefore that an expeditious determination of the present labour dispute would have been of particular importance to the applicant.

59. 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, which constitutes violation of the applicant's right to a fair hearing within a reasonable time under Article 6 (1).

60. The violation is compounded by the suspension of the proceedings and the referral of the case to the Cantonal Commission for the Implementation of Article 143 of the Law on Labour. In fact the case has not yet been transmitted and registered by the Commission due to the fact that the Supreme Court has not decided upon the request for review filed by the applicant. However, this Commission can only award the applicant a severance payment if it finds that the applicant's employment was validly terminated on the basis that she was an employee on the waiting list. The courts have not decided upon the legality of the employer's decisions and the discrimination claim set by the applicant. The Cantonal Commission does not appear to be the appropriate organ to decide on the applicant's case. Therefore, the Chamber considers that the present case has been pending for more than five years and that the body presently in charge of it is not competent to solve it.

61. The Chamber therefore concludes, based on the length of proceedings, that the Federation of Bosnia and Herzegovina has violated the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1 of the Convention.

c) Conclusion

62. For the foregoing reasons, the Chamber concludes that there has been a violation of the applicant's rights under Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

2. Complaint under Article 13 of the Convention

63. In view of its decision concerning Article 6, the Chamber considers that it does not have to examine the cases under Article 13. The requirements of that Article are less strict than those of Article 6 and are in this instance absorbed by them (see e.g., ECHR *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, p.23 par. 67).

VIII. REMEDIES

64. 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.

65. The applicant requests reinstatement into her employment and adequate compensation for lost salaries and cost of the proceedings.

66. 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. Therefore, the Chamber considers it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's claim on discrimination is decided before the court by a final and binding decision in a reasonable time.

67. 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 domestic courts.

68. 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.

69. 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

70. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as it relates to alleged violations of the right to a fair hearing within a reasonable time and to an effective remedy under Articles 6 and 13 of the Convention;

2. unanimously, to dismiss the remainder of the application as inadmissible;

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. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the applicant's claim of discrimination is decided before the court by a final and binding decision in a reasonable time;

6. unanimously, 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;

7. 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

8. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber or its successor institution, 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