DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/99/2898

Hamid ČOBAN

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 5 May 2004 with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned application introduced to the Human Rights Chamber for Bosnia and Herzegovina 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;

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Article VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement, and Rules 50, 54, 56 and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicant, who is of Bosniak origin, was employed by Elektro-Hercegovina, later established as JP Elektroprivreda Hrvatske zajednice Herceg-Bosna[1] ("Elektroprivreda HZHB" or "the former employer"), with its working unit Elektro Livno in Livno, Canton 10 of the Federation of Bosnia and Herzegovina. The applicant complains that, after the hostilities between Croats and Bosniaks broke out in West Herzegovina in 1993, he was forbidden to work. After the armed conflict, his former employer would not reinstate him into his work. In 1998 the applicant initiated court proceedings requesting reinstatement into work and compensation for lost salaries. He subsequently withdrew his reinstatement request and in renewed proceedings requested the court to establish that his labour relation existed between 21 July 1993 and 5 August 1996. He also stated a compensation claim. These proceedings are still pending before the Municipal Court in Livno. The applicant alleges a violation of his right to a fair trial within reasonable time, as well as his right to be free from discrimination in the enjoyment of his right to work.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

2. The application was introduced to the Chamber on 22 September 1999 and registered on 27 September 1999.

3. On 13 May 2000 the Chamber decided to transmit the case to the respondent Party for its observations on the admissibility and merits. On 24 July 2000 the respondent Party submitted its observations. On 20 October 2000 the applicant submitted his observations in reply.

4. The respondent Party submitted additional observations on 6 December 2000, 27 January 2004, 19 February 2004, and 12 April 2004. The applicant submitted additional observations on 9 June 2000, 18 October 2000, 27 September 2001, 12 January 2004, 4 February 2004, 12 February 2004, and 8 April 2004.

5. The Chamber considered the admissibility and merits of the case on 13 May 2000. The Commission considered the admissibility and merits of the case on 8 March 2004 and 5 May 2004. On the latter date it adopted the present decision.

III. FACTS

6. The facts of the case are partly disputed among the parties. The facts presented herein are therefore summarised from the submissions of both parties.

7. The applicant worked for the "Elektro Hercegovina" work unit "Elektro Livno" in Livno, the Federation of Bosnia and Herzegovina, beginning in 1987. After the armed conflict in Bosnia and Herzegovina broke out, the company was established as "Elektroprivreda Hrvatske zajednice Herceg-Bosna". On 21 July 1993, together with other men of Bosniak origin from Livno, the applicant was imprisoned in a concentration camp by the Croat Defence Council (*Hrvatsko vijeće obrane*). The applicant was kept there until 17 December 1993. When he was released, the applicant reported to his employer in order to resume his work. He was not allowed to work, however, but he was told by the company's authorities to continue reporting to the company. The applicant received approximately 35 percent of his salary. After several reports, the employer told the applicant not to report any longer until they decided what they would do with the employees of Bosniak origin. Apparently, the applicant has never received any written decision on his working status.

[1] The translated name of the former employer is "Public Power Company of the Croat Community of Herceg-Bosna."

8. The applicant tried to talk to the employer's authorities on several occasions, but without success. He also contacted the Office of the Federation Ombudsman in Livno, also without success.

9. On 5 August 1996 the applicant was employed by the Federal Ministry of Internal Affairs in Sarajevo. In June 2000 the applicant was employed by the Federal Tax Administration unit in Livno.

10. It appears that in 1997 the former employer invited the applicant to come to its premises in order to resolve his working status, but the applicant answered that he could not come because he was employed in Sarajevo. The applicant claims that he went to the company later, and the manager tried to persuade him to request termination of his employment with the company under poor conditions. The applicant rejected this proposal.

11. On 21 July 1998 the applicant filed an action against his former employer before the Municipal Court in Livno (*Općinski sud u Livnu*), requesting the court to order the employer to reinstate him into work and to pay him compensation for lost salaries. The applicant alleges that the Municipal Court did not schedule a hearing until 2 June 2000, *i.e.* after a delay of nearly two years. After four hearings were held, the Municipal Court issued a judgement on 27 October 2000 rejecting the applicant's claim. The Municipal Court reasoned that the applicant was employed by another employer and therefore could not request the former employer to reinstate him into work. As to the compensation claim, the Municipal Court accepted the defendant's objection that the compensation claim was filed out of time. The applicant appealed against this judgement.

12. On 25 January 2001 the Cantonal Court in Livno (*Županijski sud u Livnu*) quashed the judgement of 27 October 2000 and remitted the case back to the Municipal Court.

13. In the renewed proceedings, at a hearing held on 2 March 2001, the applicant changed his claim and requested the court to establish that his employment did not cease in the period from 21 July 1993 through 5 August 1996. He also requested compensation for lost salaries. At the same hearing, the Municipal Court in Livno issued a judgement establishing that the applicant's employment did not cease for the mentioned period, but it rejected his compensation claim as out of time.

14. The applicant appealed against the judgement of 2 March 2001 but the Cantonal Court in Livno on 21 June 2001 rejected the appeal as ill-founded. The applicant filed a request for review (*revizija*) against the judgement of the Cantonal Court. On 1 August 2002 the Supreme Court of the Federation of Bosnia and Herzegovina (*Vrhovni sud Federacije Bosne i Hercegovine*) issued a judgement accepting the applicant's request, annulling the judgements of the Cantonal and Municipal Courts in Livno, in the part rejecting the applicant's compensation claim, and remitting the case back to the first instance court. The Municipal Court in Livno, however, did not schedule a hearing in the renewed proceedings until 29 March 2004. This hearing was adjourned for an indefinite time due to the fact that the Cantonal Public Attorney, who represents the defendant as a public enterprise, had not yet been appointed. The respondent Party alleges that there are only two judges at the Municipal Court in Livno at the present moment, and that there is no possibility for them to solve the large backlog of cases pending before the Court.

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 ("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. The Law on Labour Relations

16. The Law on Labour Relations was published in the Official Gazette of the Republic of Bosnia and Herzegovina 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 referred to in paragraph 1 of this Article, 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

17. The Law on Labour (Official Gazette of the Federation of Bosnia and Herzegovina ("OG FBiH") no. 43/99, 32/00. and 29/03) 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 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."

20. 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."

21. 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."

22. 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 of this Law 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."

23. 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."

24. 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. The Law on Civil Procedure

25. Article 426 of the Law on Civil Procedure (OG FBiH no. 42/98) as well as Article 420 of the new Law on Civil Procedure (OG FBiH no. 53/03) provide that, in disputes concerning employment, the court shall pay special attention to the need to resolve such disputes as a matter of urgency.

E. Decree On Performing Powers and Obligations by Bodies of the Federation of Bosnia and Herzegovina in Business Companies on the Basis of State Capital

26. 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 (OG FBiH nos. 8/00, 40/00, 43/00, 4/01, 5/01, 26/01, 35/01, 13/02, 14/02, 68/02, and 56/03) in relevant part provides as follows:

> Article 2
>
> "In business companies where the powers and obligations of the owner of capital, on the basis of state capital, are performed by the bodies of the Federation of Bosnia and Herzegovina, the competence of the Federation administrative bodies is established… ."

Article 7

"Until the completion of the privatisation process…the Federation administrative body mentioned in Article 2 of this decree shall, proportionally to the state owned capital in the total capital of the company:

- appoint and dismiss the members of the assembly of shareholders, as well as members of the management/supervisory boards,
- give preliminary approval for the appointment of the manager of the company,
- - give preliminary approval for the articles of association of the company, … "

…

"Annex

to Article 2 of 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

THE LIST OF COMPANIES IN WHICH POWERS AND OBLIGATIONS DERIVED FROM STATE CAPITAL ARE PERFORMED BY THE ADMINISTRATIVE BODIES OF THE FEDERATION OF BOSNIA AND HERZEGOVINA:

…

V. Federal Ministry of Energy Supply, Mining and Industry

…

2. Elektroprivreda HZHB…".

V. COMPLAINTS

27. The applicant alleges that he was discriminated against on the ground of his national origin in the enjoyment of his right to work and that his right to fair hearing within a reasonable time under Article 6 of the Convention has been violated.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the admissibility

28. The respondent Party considers that the application should be declared inadmissible *ratione temporis* because the applicant was dismissed from his work in 1993. It also alleges that the application is inadmissible *ratione personae* because the applicant's employer is not a body of the respondent Party, and it cannot be held responsible for the acts of the applicant's employer. Furthermore, the respondent Party states that the applicant did not exhaust domestic remedies because the proceedings before the Municipal Court in Livno, initiated by the applicant, are still pending.

2. As to the merits

29. On the merits, the respondent Party considers the application ill-founded. It argues that the applicant contributed to his dismissal from work because he did not report regularly to the company although he was told to do so. It also asserts that the applicant was not discriminated against on any ground. It further alleges that on 15 October 1997 and 3 November 1997 the company invited the applicant to come to the company in order to regulate his working status, but he informed the company in writing that he had regulated his status in another place.

30. The respondent Party further considers that the applicant's right to a fair hearing has not been violated, taking into account the complexity of the matter to be solved. It asserts that the

hearings have been postponed due to a mutual proposal of the parties to the proceedings. In its latest submissions, however, the respondent Party argues that the Municipal Court in Livno had not scheduled a hearing in the renewed proceedings, after the previous judgement had been quashed by the decision of the Supreme Court of the Federation of Bosnia and Herzegovina, due to the fact that there are presently only two judges at the Municipal Court in Livno, and that there is no possibility for them to solve the large backlog of cases pending before the Court. After a hearing was finally held, but then adjourned for an indefinite period, the respondent Party stated that the next hearing would be held as soon as the Cantonal Public Attorney, who will represent the defendant before the court, is appointed.

B. The applicant

31. The applicant contests the allegations of the respondent Party. He claims that he was discriminated against on the basis of his national origin, as were all Bosniaks in Livno, and that he was not allowed to come to work after the cessation of hostilities. Therefore, the violation of his rights continued after 14 December 1995, and the respondent Party's objection *ratione temporis* is ill-founded. The applicant also contests the respondent Party's objection *ratione personae* alleging that "Elektro Livno" was part of a socially-owned company "Elektro Hercegovina", and that today it is a public enterprise owned by the State.

32. The applicant alleges that Municipal Court in Livno has allowed the defendant to cause unjustified delays in the proceedings. He also asserts that the Municipal Court in Livno did not schedule any hearing in the renewed proceedings for 20 months. In his last submissions the applicant states that the court finally scheduled a hearing in the renewed proceedings for 29 March 2004, but that it was adjourned for procedural reasons.

VII. OPINION OF THE COMISSION

A. Admissibility

33. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

34. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept.… In so doing, the [Commission] shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted … (c) The [Commission] 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*

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

36. The Commission 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 Commission *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 admissibility of 13 September 1996, Decisions on Admissibility and Merits March 1996 – December 1997).

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

38. The Commission notes that the applicant was not allowed to work prior to the entry into force of the Agreement on 14 December 1995. This status continued after cessation of the armed conflict. Although the applicant on 15 October 1997 and 3 November 1997 (see paragraphs 10 and 29) was invited to come to the company and regulate his working status, which he later did, he has actually never been allowed to come back to his work with his former company. Therefore, the applicant's grievance in respect of his inability to return to work relates to a situation that continued after 14 December 1995. Thus, the situation falls within the Commission's competence *ratione temporis*.

39. 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 occurred or continued after 14 December 1995.

2. Competence *ratione personae*

40. The respondent Party also objects as to the admissibility *ratione personae*, arguing that Elektroprivreda HZHB was not a body of the respondent Party, and that it therefore cannot be held responsible for the acts and omissions of the applicant's former employer.

41. The Commission has jurisdiction over applications directed against the Parties to the Agreement, namely Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska. This jurisdiction, as set out in Article II of the Agreement, extends to violations of the rights and freedoms provided for in the relevant international agreements, where such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under authority of such an official or organ.

42. Although the respondent Party alleges that it cannot be held responsible for the acts of the applicant's former employer, the Commission notes that the former employer, "Elektroprivreda HZHB" was a public enterprise owned by the state, and that now it is a limited liability company with a majority of state-owned capital. According to Article 7 of 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, in connection with paragraph V of the Annex to Article 2 of that Decree (see paragraph 26 above), the Federal Ministry of Energy Supply, Mining and Industry ("the Federal Ministry") is entitled to appoint and dismiss the members of the assembly of shareholders, management and supervisory boards of Elektroprivreda HZHB proportionately to the amount of state-owned capital in the company. Furthermore, the Federal Ministry is entitled to give preliminary approval for the appointment of the manager of the company, as well as for the company's articles of association. Having in mind that the company is governed by the manager and management board, it is clear to the Commission that public bodies for which the Federation of Bosnia and Herzegovina is responsible have a direct influence on the acts and omissions of the applicant's former employer (*see* case no. CH/99/2696 *Brkić v. The Federation of Bosnia and Herzegovina*, decision of 8 October 2001, Decisions July-December 2001 and case no. CH/00/3476 *M.M*. v. *The Federation of Bosnia and Herzegovina*, decision of 7 March 2003,

Decisions January-July 2003). This conclusion is compounded by the fact that the respondent Party, in its latest submissions, admits that the Cantonal Public Attorney, a public body of the Federation of Bosnia and Herzegovina, will represent the applicant's former employer as the defendant in the proceedings before the court. In these circumstances, the Commission concludes that the impugned acts and omissions of the former employer are attributable to the Federation of Bosnia and Herzegovina for the purposes of the Agreement.

43. The Commission also recalls the undertaking of the Parties to the Agreement to secure the rights and freedoms mentioned in the Agreement to all persons within their jurisdiction. This undertaking not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to ensure and protect those rights *(see* case no. CH/96/1, *Matanović* v. *The Republika Srpska,* decision on the merits of 6 August 1997, paragraph 56, Decisions on Admissibility and Merits March 1996 -- December 1997, and case no. CH/97/41, *Marčeta v. The Federation of Bosnia and Herzegovina*, decision of 3 April 1998, paragraph 65, Decisions and Reports 1998). Such positive obligation of the executive and judicial branch falls within the responsibilities of the Federation of Bosnia and Herzegovina as one of the Entities of Bosnia and Herzegovina (see Article III(3) of the Constitution of Bosnia and Herzegovina).

44. Having regard to the above, the Commission rejects the Federation's argument that it cannot be held responsible *ratione personae* for the impugned acts in question.

3. With respect to the discrimination claim

45. The applicant complains that he was discriminated against in the enjoyment of his right to work. He asserts that in 1993 he was not allowed to work by his former employer because of his Bosniak origin. He also complains that after the end of hostilities he was again discriminated against on the ground of his national origin because his employer did not want to reinstate him into his previous position.

46. As the Commission has already stated (see paragraph 38 above), it is competent to examine only alleged violations that have occurred or continued after 14 December 1995. With regard to the applicant's discrimination claim, the Commission notes that the applicant, before the Municipal Court in Livno, initially requested to be reinstated into his previous position, but changed his claim on 2 March 2001, requesting only that the court establish that his labour relation did not cease during the period from 21 July 1993 through 5 August 1996. This new request was granted by the court in its judgement of 2 March 2001. Thus, the applicant withdrew his request to be reinstated into his position. Accordingly, the applicant has not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement with respect to his discrimination claim. The Commission therefore declares inadmissible the parts of the application related to the termination of the applicant's employment and related to discrimination in the enjoyment of his right to work and related rights.

4. Requirement to exhaust effective domestic remedies

47. The Commission 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 his complaints and, if so, whether he 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 his application based on the Agreement and to satisfy the Commission that the remedy was an effective one.

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

49. The Commission recalls that the applicant filed a civil action before the Municipal Court in Livno in 1998 initially requesting, *inter alia*, compensation for lost salaries. Since then, the

Municipal and Cantonal Courts in Livno have conducted two sets of proceedings. Two first instance and second instance judgements were issued. All of these judgements, however, were quashed by the Cantonal Court in Livno or by the Supreme Court of the Federation of Bosnia and Herzegovina. The renewed proceedings upon the applicant's action are still pending before the Municipal Court in Livno.

50. In these circumstances, the Commission finds that the applicant, after almost six years of court proceedings, cannot be required, for the purposes of Article VIII(2)(a) of the Agreement, to further await the outcome of the proceedings before the courts of the respondent Party.

5. Conclusion as to admissibility

51. The Commission concludes that the application is admissible insofar as the applicant complains of violations of his right to a fair hearing within a reasonable time under Article 6 of the Convention. The Commission declares the remainder of the application inadmissible.

B. Merits

52. Under Article XI of the Agreement, the Commission 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

53. The applicant complains about the length of the proceedings before domestic courts. The Commission 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…."

54. The Commission must therefore decide whether Article 6, paragraph 1 is applicable in the present case and, if so, whether the "reasonable time" criterion was respected in the relevant proceedings.

a. Determination of the civil character of the proceedings

55. The Commission recalls that, in its jurisprudence, the Human Rights Chamber consistently considered that disputes relating to private employment relations concern "civil rights and obligations". The Commission further notes that the parties have not placed this conclusion at issue. The Commission therefore 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 Commission concludes that Article 6 of the Convention is applicable in this case.

b. Length of the proceedings

56. The Commission notes that the applicant filed his action against his former employer before the Municipal Court in Livno on 21 July 1998. It appears that the first hearing in the applicant's case was not scheduled for almost two years. Only on 27 October 2000 did the Municipal Court issue a judgement rejecting the applicant's claim. The applicant appealed against this judgement, and on 25 January 2001 the Cantonal Court in Livno annulled the first instance judgement and remitted the case back to the Municipal Court. In the renewed proceedings the applicant changed his claim, withdrawing his request to be reinstated into work, and requesting only that the Municipal Court establish that his labour relation did not cease between 21 July 1993 until 5 August 1996, when he became employed by the Federal Ministry of Interior. On 2 March 2001, the Municipal Court issued a judgement establishing that the applicant's labour relation did not cease during that period, but rejecting the applicant's compensation claim as out of time. After the Cantonal Court in Livno rejected the applicant's appeal on 21 June 2001, the Supreme Court of the Federation of Bosnia and Herzegovina, on 1 August 2002, deciding upon the applicant's request for review, quashed the first and second instance judgements and remitted the case back to the Municipal Court in Livno. The Municipal Court in Livno did not schedule a hearing in the renewed proceedings until 29 March 2004. The proceedings were adjourned again and remain pending. In sum, the length of the proceedings to be considered in this case exceeds five years and nine months.

57. When assessing the length of proceedings for the purposes of Article 6, paragraph 1 of the Convention, the Commission 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).

58. The issue in the applicant's case is whether the applicant was illegally forbidden to work, as well as whether the courts should have determined whether his compensation claim was well-founded, *i.e.* whether it was timely filed. Although the respondent Party argues that the applicant's case is particularly complex because there were many facts to be established, the Commission finds that the courts need only have established whether the applicant was legally forbidden to work (*i.e.* with legal cause and with a written decision delivered to him), and if not, whether the applicant filed his compensation claim within the legal time limit. The Commission cannot find that these issues are of a particularly complex nature.

59. The Commission notes that the Municipal Court in Livno issued its first decision on 27 October 2000, more than two years after the applicant filed his action. During that period, the court held four hearings, the first of which apparently occurred on 2 June 2000, more than 22 months after the action was filed. In its submissions, the respondent Party argues that the Municipal Court regularly scheduled and held hearings in the applicant's case and that the hearing scheduled for 19 June 2000 was adjourned on the mutual proposal of the parties. The Commission, however, cannot find any justification in the record for a delay of two years in the proceedings before the Municipal Court issued its first decision in the case. The fact that one hearing was postponed on the parties' mutual proposal should not have created a significant delay in the proceedings. Rather, it appears the delay can be attributed to insufficient activity in the case on the part of the Municipal Court in Livno. The Municipal Court took nearly two years to hold the first hearing in the initial proceedings. The Commission can find no reason that justifies this extended delay.

60. Further, after two sets of first and second instance proceedings in the applicant's case were eventually conducted, and the Cantonal Court's judgement of 21 June 2001 was quashed by the Supreme Court of the Federation of Bosnia and Herzegovina on 1 August 2002, the Municipal Court in Livno scheduled the first hearing in the renewed proceedings only on 29 March 2004, 20 months later, and that hearing has been indefinitely postponed. The respondent Party argues that this significant delay in the proceedings was due to the fact that there were only two judges in the

Municipal Court in Livno, implying that so few judges were not capable of resolving the large backlog of cases pending before the court. The respondent Party further asserts that the 29 March 2004 hearing was postponed because the Cantonal Public Attorney, who is to represent the applicant's former employer, had not yet been appointed. It argues that a new hearing in the case will be scheduled as soon as the Public Attorney is appointed.

61. The Commission recalls, however, that the Chamber consistently held that delays caused by lack of judicial or administrative staff, backlog of work, or additional judicial commitments are the responsibility of the respondent Party (*see e.g.*, case no. CH/00/3880 *Marjanovic*, decision on admissibility and merits of 8 November 2002, paragraph 157, Decisions July – December 2002; see also Eur. Court HR, *Zimmerman and Steiner v. Switzerland*, judgement of 13 July 1983, Series A no. 66, paragraphs 27 to 32; *Guincho v. Portugal*, judgement of 10 July 1984, Series A no. 81, paragraphs 40 to 41). Therefore, as to the administration of its judicial system, it is the duty of the respondent Party to organise its legal system so as to allow the courts to comply with the requirements of Article 6, paragraph 1, including that of trial within a reasonable time (*see, e.g.,* Eur. Court HR, *Ziacik v. Slovakia*, decision on the merits of 7 January 2003, paragraphs 44-45). Any delays caused by a failure to comply with this requirement will be directly attributable to the respondent Party (see, e.g., Eur. Court HR, *Ledonne (No. 2) v. Italy*, judgment on the merits of 12 May 1999, paragraph 23). Therefore, the Commission considers that the respondent Party is responsible for the delays in the proceedings in the applicant's case.

62. Having regard to the above, the Chamber finds that the length of proceedings in this case has been unreasonable and that the respondent Party is responsible, in violation of the applicant's right to a fair hearing within a reasonable time under Article 6, paragraph 1 of the Convention.

c. Conclusion

63. The Commission 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.

VIII. REMEDIES

64. Under Article XI(1)(b) of the Agreement, the Commission 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 Commission shall consider issuing orders to cease and desist, monetary relief, as well as provisional measures.

65. The applicant initially requested reinstatement into his employment and adequate compensation for lost salaries and costs of the proceedings. He subsequently changed his request before the courts, requesting that it be established that his labour relation existed between 21 July 1993 and 5 August 1996, and, accordingly, that he be awarded compensation for lost salaries.

66. The Commission 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 Commission considers it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's compensation claim is dealt with expeditiously and decided before the courts by a final and binding decision without further unreasonable delay.

67. The Commission further considers it appropriate to award compensation to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided before the courts within a reasonable time.

68. Accordingly, the Commission will order the respondent Party to pay to the applicant the sum of 1,000 (one thousand) Convertible Marks (*Konvertibilnih Maraka*) within one month of

receipt of this decision in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

69. The Commission will further award simple interest at an annual rate of 10% (ten percent) as of the due date 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 Commission 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 under Article 6 of the European Convention on Human Rights;

2. unanimously, to declare the remainder of the application 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, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the applicant's compensation claim is decided before the courts by a final and binding decision without further unreasonable delay;

5. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month of receipt of this decision, 1,000 (one thousand) Convertible Marks by way of compensation for non-pecuniary damages;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of 10% (ten percent) on the sum to be paid to the applicant in the preceding conclusion, such interest to be paid as of the due date on the sum awarded or any unpaid portion thereof until the date of settlement in full; and

7. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than 29 October 2004 on the steps taken by it to comply with the above orders.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission