DECISION ON ADMISSIBILITY AND MERITS

Cases nos. CH/00/6425, CH/01/7326 and CH/02/11944

Sulejman ĐUGUM, Semka DIZDAR and Mustafa KARAHASAN

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 10 September 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 applications 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 VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement and Rules 32, 50, 54, 56 and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina of Bosniak origin. Before the armed conflict in Bosnia and Herzegovina, they worked as teachers in the Primary School "Ivan Mažuranić" in Tomislavgrad ("the Employer"), now Herzeg-Bosnia Canton ("Canton 10") of the Federation of Bosnia and Herzegovina. At the beginning of the Bosniak-Croat conflict, the Director of the Primary School verbally informed the applicants Sulejman Đugum and Mustafa Karahasan not to come to work any more, while the applicant Semka Dizdar was released from her duties by a procedural decision of the Primary School director of 10 September 1992 because of the reduced volume of work. After the war ended, the applicants requested to be reinstated into work, but without success. They allege that this was due to discrimination based on their ethnic or national origin.

2. The applications raise issues under Article 6 of the European Convention on Human Rights ("the Convention") and in relation to discrimination in realizing the right to work and related rights protected under Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights ("the ICESCR").

3. Considering the similarity between the facts of the cases and the complaints of the applicants, the Commission decided to join the applications in accordance with Rule 32 of the Commission's Rules of Procedure on the same day it adopted the present decision.

II. PROCEEDINGS BEFORE THE CHAMBER/COMMISSION

4. The applications were introduced in the period between 30 November 2000 and 29 July 2002. The applicant Mustafa Karahasan is represented by Mr. Esad Hrvačić, a lawyer practicing in Sarajevo. The other two applicants do not have representatives in the proceedings before the Commission.

5. On 7 May 2004 the Commission transmitted the applications to the respondent Party under Article 6 of the Convention and with regard to discrimination in the enjoyment of the right to work in relation to Articles 6(1) and 7 of the ICESCR.

6. On 8 June 2004 the respondent Party submitted its written observations on the admissibility and merits to the Commission.

7. On 9 June 2004 the Commission sent the applicants the respondent Party's written observations on the admissibility and merits.

8. On 30 June 2004 the applicants Sulejman Đugum and Semka Dizdar submitted their response to the respondent Party's observations on the admissibility and merits. The representative of the applicant Mustafa Karahasan has not submitted any response to the respondent Party's written observations on the admissibility and merits.

9. On 2 July 2004 the Commission sent the respondent Party the applicants' responses to its observations.

10. On 5 July 2004 the applicant Semka Dizdar again submitted a response to the observations of the respondent Party. On 9 August 2004 the Commission sent this response to the respondent Party.

11. The Commission considered the admissibility and merits of the applications on 5 May 2004, 8 July 2004, and 10 September 2004. On the latter date, it joined the applications and adopted the present decision.

III. FACTS OF THE INDIVIDUAL CASES

12. The facts in these cases are not disputed among the parties. The facts stated in paragraphs 13 and 33 below are based on the applicants' allegations, and the respondent Party has not contested them.

A. Case no. CH/00/6425, Sulejman Đugum

13. The applicant worked with the Employer from 1967 until August 1993 when the Primary School director verbally informed him not to come to work any more. In 1992 and 1993 at least 17 more Bosniak teachers remained jobless in the primary school and teachers of Croat origin were employed instead of them.

14. The applicant has never received a written procedural decision on the termination of his employment.

15. On 8 February 1996 the applicant addressed the Ombudsman's Office of the Federation of Bosnia and Herzegovina in Mostar requesting protection of his human rights and requesting help to be reinstated to his work.

16. On 1 April 1998 the applicant filed a lawsuit against the Employer before the Municipal Court in Tomislavgrad for determination of the status of his employment and his work-related rights.

17. On 15 December 1999 the applicant addressed the Employer in writing, requesting to be reinstated to work.

18. On 5 January 2000 the applicant received an unsigned decision of the School Board which stated that there were no available positions in the school to which he could be reinstated.

19. On 18 April 2000 the Municipal Court in Tomislavgrad issued a judgment accepting the applicant's claim. The operative section of the judgment reads as follows:

> "1. It is established that the plaintiff is employed on permanent basis with the defendant.
>
> "2. The defendant is obliged, in accordance with its normative acts, to enable the plaintiff to be reinstated to his former work post in accordance with his professional qualifications and working capacities within 15 days after the judgment has become final and binding.
>
> "3. Each party bears the expenses of the proceedings."

20. The Employer timely filed an appeal against the 18 April 2000 judgment of the Municipal Court in Tomislavgrad before the Cantonal Court in Livno.

21. On 4 July 2000 the Cantonal Court in Livno issued a procedural decision accepting the appeal of the Primary School, quashing the contested judgment, and returning the case to the first instance court for renewed proceedings.

22. On 6 October 2000 the Municipal Court in Tomislavgrad issued a procedural decision suspending the proceedings in the applicant's case against the Primary School and referring the case to the Cantonal Commission for Implementation of Article 143 of the Law on Labour ("the Cantonal Commission").

23. On 18 October 2000 the applicant's representative[1] received the procedural decision of the Municipal Court in Tomislavgrad on suspension of the proceedings, and he timely filed an appeal against the decision before the Cantonal Court in Livno, stating that the applicant's case no longer fell within the domain of Article 143 of the Law on Labour.

24. On 15 February 2001 the Cantonal Court in Livno rejected the appeal and upheld the first instance procedural decision.

25. On 1 December 2000 the applicant filed an appeal before the Cantonal Commission for violation of his rights in his working relations. He explicitly stated in the appeal that he "lost his job due to one fact, that being his Bosniak origin".

26. On 6 June 2001 the Cantonal Commission issued a procedural decision rejecting the applicant's appeal.

27. On 9 June 2001 the applicant filed an appeal against the procedural decision of the Cantonal Commission before the Federal Commission for Implementation of Article 143 of the Law on Labour ("the Federal Commission").

28. On 22 February 2004 the Federal Commission issued a procedural decision accepting the applicant's appeal, quashing the first instance decision of the Cantonal Commission of 6 June 2001, and ordering the Employer to establish the working-legal status of the applicant within 15 days from the date of receipt of the procedural decision of the Federal Commission in accordance with Article 143 of the Law on Labour.

29. On 19 May 2004 the Ministry of Science, Education, Culture and Sport Livno ("the Ministry") sent a letter to all primary and secondary schools in Canton 10. By this letter, schools that had employees on a waiting list in accordance with Article 143 of the Law on Labour who received a final procedural decision on their reinstatement to work were requested to submit a list of those with final procedural decisions. It was also requested that the amounts of severance payments and contributions due to be paid be calculated for the same employees.

30. On 26 May 2004 the Employer sent the Ministry a request for approval of payment of contributions and severance payments for the applicant.

B. Case no. CH/01/7326, Semka Dizdar

31. The applicant worked with the Employer as a physics and mathematics teacher from 1 October 1968 until 10 September 1992.

32. On 10 September 1992 the Primary School director issued a procedural decision relieving the applicant of her duties as of 10 September 1992. It is stated in the operative section of the procedural decision that the applicant's rights and obligations based on her employment would continue to exist during wartime circumstances, except for her right to salary. It is further stated that the applicant remained unemployed due to reduced volume of work, i.e. a reduced number of classes during the war.

33. On 10 September 1992 14 other teachers of Bosniak origin were released from their duties, plus 13 more teachers of Bosniak origin in 1993, and teachers of Croat origin were employed in their work posts.

[1] In the proceedings before the domestic organs, the applicant was represented by Mehmed Šator, a lawyer practicing in Mostar.

34. On 24 September 1992 the applicant filed an objection against the 10 September 1992 procedural decision.

35. On 26 October 1992 the School director issued a procedural decision rejecting the applicant's objection as ill-founded.

36. On 23 September 1992 the applicant filed a proposal for cancellation of the procedural decision on termination of her employment before the Basic Court of Associated Labour in Mostar.

37. On 29 February 1996 the applicant addressed the Federation of Bosnia and Herzegovina Ombudsman Office in Mostar with a request for protection of her human rights in her working relations. She stated in the request that she lost her job because of her Bosniak origin and that an employee of Croat origin was employed in her post.

38. On 11 December 1999 the applicant filed a request with the Employer for reinstatement to work on the basis of the Law on Labour.

39. On 5 January 2000 the applicant received an unsigned decision of the School Board in which it was stated that there were no available work posts in the School to which she could be reinstated.

40. On 31 January 2000 the applicant filed an objection against the decision of the School Board, but she has never received any response.

41. On 21 September 2000 the Municipal Court in Tomislavgrad issued an interim judgment establishing that the applicant had been employed with all the rights and obligations related to the work post of a teacher, and it cancelled the 1992 procedural decision on termination of her employment as illegal.[2] Further, the operative section states that that the Employer is obliged to reinstate the applicant to her pre-war work post within eight days after the judgment has become final and binding under the threat of compulsory enforcement and that compensation of salary would be decided in the further course of the proceedings by a final decision.

42. The Employer timely filed an appeal against this interim judgment before the Cantonal Court in Livno.

43. On 4 December 2000 the applicant filed an appeal before the Cantonal Commission for establishment of her working relations.

44. On 13 December 2000 the Cantonal Court in Livno accepted the appeal, quashed the first instance interim judgment, and returned the case to the first instance court for renewed proceedings.

45. On 31 January 2001 the Municipal Court in Tomislavgrad issued a procedural decision suspending the proceedings and referring the case to the Cantonal Commission.

46. The applicant filed an appeal to the Cantonal Court in Livno against this procedural decision of the Municipal Court in Livno because she considers that her case does not fall within the scope of Article 143 of the Law on Labour.

[2] The Municipal Court in Tomislavgrad took over the case from the Basic Court of Associated Labor in Mostar because the courts of associated labor ceased to function on 30 June 1992 in accordance with the Law on Cessation of Application of the Law on Courts of Associated Labor (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 4/92).

47. By its procedural decision of 5 April 2001 the Cantonal Court in Livno rejected the applicant's appeal and upheld the first instance procedural decision.

48. The applicant filed a review against the Cantonal Court in Livno's decision of 5 April 2001 before the Supreme Court of the Federation of Bosnia and Herzegovina.

49. On 9 May 2002 the Supreme Court issued a procedural decision rejecting the review. It is stated in the reasoning that a review is not allowed because the dispute was not competently resolved by the procedural decision on suspension of the proceedings, and a review is allowed only against final and binding second instance decisions, and only exceptionally against procedural decisions of the second instance court when the proceedings, which are ordinarily competently concluded by a judgment, are concluded by a final procedural decision of that court.

50. On 26 June 2001 the Cantonal Commission issued a procedural decision rejecting the applicant's appeal for establishment of her working-legal status within the meaning of Article 143 of the Law on Labour.

51. The applicant filed an appeal against the procedural decision of the Cantonal Commission before the Federal Commission.

52. On 3 October 2003 the Federal Commission issued a procedural decision accepting the applicant's appeal, cancelling the procedural decision of the Cantonal Commission, and returning the case to the Cantonal Commission for renewed proceedings.

53. On 4 February 2004 the Cantonal Commission issued a procedural decision recognizing the applicant's status as an employee on the waiting list, and it ordered the Employer to resolve the applicant's working-legal status within 15 days from the date of the receipt of the procedural decision in accordance with Article 143 of the Law on Labour.

54. The Ombudsmen of the Federation of Bosnia and Herzegovina, Office in Livno, informed the Employer on 15 April 2004 that they had initiated an investigation in the applicant's case and in the case of the applicant Sulejman Đugum.

55. On 19 May 2004 the Ministry sent a letter to all primary and secondary schools in Canton 10. By this letter, schools that had employees on a waiting list in accordance with Article 143 of the Law on Labour who received a final procedural decision on their reinstatement to work were requested to submit a list of those with final procedural decisions. It was also requested that amounts of severance payments and contributions due to be paid be calculated for the same persons.

56. On 26 May 2004 the Primary School sent a request to the Ministry for approval of payment of contributions and severance payment for the applicant.

57. The applicant has never received any written procedural decision on termination of her employment.

C. Case no. CH/02/11944, Mustafa Karahasan

58. The applicant worked with the Employer as a teacher in lower classes from 1 September 1969 until 1993, when the Primary School director verbally instructed him not to come to work any more.

59. The applicant has never received any written procedural decision on termination of his employment.

60. In 1998 the applicant filed a lawsuit against the Employer before the Municipal Court in Tomislavgrad for resolution of his working-legal status.

61. On 18 April 2000 the Municipal Court issued a judgment accepting the applicant's claim. The operative section of the judgment reads as follows:

> "1. It is established that the plaintiff is employed on permanent basis with the defendant.
>
> "2. The defendant is obliged, in accordance with its normative acts, to enable the plaintiff to be reinstated to his former work post in accordance with his professional qualifications and working capacities within 15 days after the judgment has become final and binding.
>
> "3. Each party bears the expenses of the proceedings."

62. The Employer filed an appeal against the judgment of the Municipal Court in Tomislavgrad before the Cantonal Court in Livno.

63. On 4 July 2000 the Cantonal Court in Livno accepted the Employer's appeal, quashed the contested judgment, and returned the case to the first instance court for retrial.

64. On 6 October 2000 the Municipal Court in Tomislavgrad issued a procedural decision suspending the proceedings in the applicant's case and, after the procedural decision has become final and binding, referring the case to the Cantonal Commission.

65. The applicant filed an appeal against this procedural decision before the Cantonal Court in Livno, which rejected the appeal by its procedural decision of 15 March 2001 and upheld the first instance procedural decision on suspension of the proceedings.

66. On 15 December 1999 the applicant filed a request before the Employer for reinstatement to work but he never received a reply.

67. On 1 December 2000 the applicant filed an appeal before the Cantonal Commission for realization of his rights under Article 143 of the Law on Labour.

68. On 6 June 2001 the Cantonal Commission issued a procedural decision rejecting the applicant's appeal.

69. The applicant filed an appeal against the procedural decision of the Cantonal Commission before the Federal Commission.

70. On 2 April 2004 the Federal Commission issued a procedural decision establishing that the applicant's appeal was founded. The procedural decision of the Cantonal Commission of 6 June 2001 was cancelled by the same procedural decision, and the Employer was ordered to resolve the applicant's working-legal status within 15 days after the receipt of the procedural decision of the Federal Commission in accordance with Article 143 of the Law on Labour.

71. On 19 May 2004 the Ministry sent a letter to all primary and secondary schools in the Canton 10. By this letter, schools that had employees on a waiting list in accordance with Article 143 of the Law on Labour who received a final procedural decision on their reinstatement to work, were requested to submit a list of those with final procedural decisions. It was also requested that amounts of severance payments and contributions due to be paid be calculated for the same persons.

72. On 26 May 2004 the Primary School sent a request to the Ministry for approval of payment of contributions and severance payment for the applicant.

IV. RELEVANT LEGAL FRAMEWORK

A. The Law on Labour Relations

73. The Law on Labour Relations was published in the Official Gazette of the Republic of Bosnia and Herzegovina ("OG RBiH") no. 21/92 on 23 November 1992. It was passed 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).

74. The law 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 the 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.
> >
> > if taken prisoner….
> >
> > if there is no information available of his/her whereabouts…
>
> …
>
> "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."

B. The Law on Fundamental Rights in Labour Relations

75. 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).

76. Article 23, paragraph 2 of the Law provides that:

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

C. The Law on Labour

77. The Law on Labour (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 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.

78. 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, color, sex, language, religion, political or other opinion, ethnic or social origin, financial situation, birth or any other circumstance, membership or non-membership in a political party, membership or non-membership in a trade union, and physical or mental impairment in respect of recruitment, training, promotion, terms and conditions of employment, cancellation of the labour contract or other issues arising out of labour relations.

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

1. which are made in good faith based upon requirements of particular a job;

2. which are made in good faith based on incapability of a person to perform tasks required for a particular job or to undertake training required, provided that the employer or person securing professional training has made reasonable efforts to adjust the job or the training which such person is on, or to provide suitable alternative employment or training, if possible;

3. activities that have as an objective the improvement of the position of persons who are in 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."

79. 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 with 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."

80. 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."

81. In the Law on Amendments to the Law on Labour, a new Article 143a was added to the Law on Labour as follows:

"(1) An employee believing that his employer violated a right of his arising from paragraph 1 and 2 of Article 143, may within 90 days from the entry into force of the Law on Amendments to Labour Law, 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 overtake the jurisdiction of the Cantonal Commission.

"(4) If a procedure pertaining to the rights of the employee under paragraph 1 and 2 of the 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."

82. In the Law on Amendments to the Law on Labour, a new Article 143c was added to the Law on Labour as follows:

"The Federal/Cantonal Commission may:

1. hear the employee, employer, and their representatives;
2. summon witnesses and experts;
3. request appropriate authority organs and employers to submit all relevant information.

"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."

83. The Law on Amendments to the Labour Law 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 realization 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."

84. 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 Commission and Federal Commission 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 labour relations. Therefore, their final decisions are not subject to judicial review under regular administrative dispute procedures, which are limited to review of administrative acts. Extra-judicial 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 Law on civil procedure.

D. The Law on Civil Proceedings

85. On 11 November 1998 the Law on Civil Procedure of the Federation of Bosnia and Herzegovina entered into force (OG FBiH no. 42/98 and 3/99). Article 426 of this Law stipulates that, in proceedings concerning labour relations, the court shall generally have regard to the urgency of such matters, especially in scheduling hearings and setting time limits. A new Law on Civil Procedure took effect on 5 November 2003 (OG FBiH 53/03).

E. The Law on Primary Education of Canton 10

86. The Law on Primary Education of Canton 10 (Official Gazette of Canton 10, no.4/98 and 6/98) provides as follows:

> Article 10
>
> "(1) A primary school can be founded by the assembly of the Canton and by the municipalities
> …
>
> "(3) Under the conditions established in Article 13 ... a primary school can be established by physical persons or religious communities, but with previous consent of the Ministry [competent for Education]."

Article 13

...

"(3) A primary school can commence working when the Ministry establishes that all the conditions ... have been met."

Article 77

"(1) A primary school is ruled by a director and a school board.

"(2) [The] director...

- organizes the work of the school and...is responsible for the legality of the school's work;…

- issues final decisions on hiring and terminating the labour relations of the employees of the school...."

Article 78

"(1) [The] Director of primary school ... is appointed by the school board, with [previous] consent of the founder and Minster [for education)]...

"(2) [The] Minister will appoint the director of the school if he/she does not grant the consent to the proposal [of the school board].

Article 79

"...

"(3) The founder elects more than half of members of the School Board...

"(4) ... [D]ecisions are made by the votes of majority of members of the school board."

V. COMPLAINTS

87. The applicants allege that their rights to work have been violated because their employment was terminated because of their ethnic origin. The applicant Sulejman Đugum also considers that Article 1 of Protocol No. 1 to the Convention and Articles 6 and 8 of the Convention have been violated. The applicant Semka Dizdar considers that the following rights from her labour relations have been violated: her right to work, her right to salary on the basis of employment, her right to compensation for pension and invalid insurance, and her right to health protection. She also maintains that her right to a fair trial under Article 6 of the Convention has been violated. The applicant Mustafa Karahasan considers that his rights under Articles 8 and 14 of the Convention have also been violated. The applicants request to be reinstated to their former work posts and to be paid, in accordance with the Human Rights Chamber's practice in similar cases, monetary compensation for pecuniary and non-pecuniary damages they have suffered, including salaries for the entire period during which they were prevented from working until the day of their reinstatement to work in the monthly amount of 500 Convertible Marks ("KM") and all contributions to social insurance funds for the same period.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the facts

88. The respondent Party has not contested the facts stated by the applicants.

2. As to the admissibility

89. The respondent Party first challenges the competence of the Commission *ratione temporis* in relation to the issues raised in the applications concerning events that occurred before the Agreement entered into force.

90. The respondent Party also considers that domestic remedies have not been exhausted because the Employer undertook measures to resolve the applicant's working-legal status in accordance with decisions of the Cantonal Commission. The respondent Party alleges that the applicants can file an objection against the Employer's procedural decision if they are not satisfied with the way in which the Employer will resolve their working-legal status. If they are not satisfied with the procedural decision upon the objection, or if the Employer does not resolve their working-legal status within the time limits prescribed by the law, they will have the possibility of court protection before a competent court.

91. With regard to the applicants' statements that their rights guaranteed under Article 6 of the Convention have been violated, the respondent Party asserts that they have not been violated, and it proposes that these parts of the applications be declared inadmissible as manifestly ill-founded.

3. As to the merits

92. With regard to Article 6 of the Convention, the respondent Party stresses that the courts of the respondent Party, having acted in accordance with valid legal regulations, have decided within a reasonable time upon the applicants' requests and issued appropriate decisions. Further, the applicants' requests before the Commissions for Implementation of Article 143 of the Law on Labour have been resolved within a reasonable time, and Article 6 of the Convention has therefore not been violated in the applicants' cases.

93. The respondent Party asserts that the applicants' employment was not terminated but claims that they had the status of workers on the waiting list. The respondent Party explains that the institution of waiting lists was provided by regulations on labour relations during the war or immediate threat of war, since the war conditions caused the scope of activities to be significantly reduced for many employers, which resulted in temporary cessation of a need for employees. In relation to Article II(2)(b) of the Agreement, the respondent Party maintains that the applicants do not prove what has constituted possible discrimination, nor do they offer any argument for their claims. The mere assertion of discrimination, direct or indirect, without arguments cannot be a ground for the existence of discrimination. The respondent Party has not submitted further observations to the applicants' responses to observations on the admissibility and merits that were timely transmitted to it (see paragraphs 9 and 10 above).

94. In relation to Articles 6 and 7 of the ICESCR, the respondent Party asserts that war circumstances and a different system of school financing that was subsequently passed have influenced the applicants' working conditions. It stresses that the respondent Party cannot be blamed for that.

4. As to the compensation claim

95. With regard to the compensation claims, the respondent Party points out that resolution of the applicants' working-legal status is pending in accordance with decisions of the Cantonal and Federal Commission, and that therefore the compensation claims filed in the applications will be settled. Thus, the applications in this regard are entirely ill-founded, and, as to these parts, they should be declared inadmissible.

B. The applicants

1. Case no. CH/00/6425, Sulejman Đugum

96. The applicant considers his application admissible in its entirety, and he refers to the Chamber's decisions in similar cases. He also considers that domestic remedies are not effective because the proceedings before domestic organs have been pending since 1998 and he has not yet been able to exercise his rights under his labour relations. He explicitly maintains that his case was wrongly transferred to the Cantonal Commission because it was not within the scope of Article 143 of the Law on Labour. The applicant alleges that he had worked with the Employer for 26 years as a teacher until the director informed him not to come to work any more because of his Bosniak origin. He alleges that he was not allowed to work although he had never received any decision on his status with the Employer. He also alleges that a teacher of Croat origin with less working experience was employed in his work post. Furthermore, the applicant alleges that he has addressed the Employer on several occasions, both in writing and verbally, requesting to be reinstated to his pre-war position, but the Employer did not respond to his requests until 5 January 2000 (see paragraph 18 above). The applicant stresses that he and his colleagues, whose names he states, were told not to come to work any more only because they are Bosniaks. He considers that he has been discriminated against by the Employer because of his Bosniak origin and Islamic religion, unlike other employees of Croat origin. He alleges that he was not an employee on the waiting list because the Employer was obliged, in that case, to invite him to his pre-war work post immediately after the end of the war. According to him, there has been no justified explanation or legitimate aim for the actions of the Employer, and he alleges that the discrimination has been continued to the present. He alleges that only one Bosniak works with the Employer today, due to lack of personnel of Croat origin. As to the compensation claim, the applicant does not agree with the standpoint of the respondent Party that this will be fairly settled in accordance with the decision of the Federal Commission, because, in his opinion, his case did not fall within the scope of Article 143 of the Law on Labour, and in the end, the only possibility for him will be to seek protection of his rights again before the court, by which he enters "a vicious procedural cycle" from which there is no way out. Finally, the applicant concludes that the respondent Party has not established an organized and efficient system of court protection that would ensure him a fair trial and protection of his rights.

2. Case no. CH/01/7326, Semka Dizdar

97. The applicant maintains that her application is admissible *ratione temporis* because the violation of her rights in her labour relations existed after 1995 and it continues today. The applicant also considers her application admissible by all other criteria and she refers to the case law of the Chamber and the Constitutional Court of Bosnia and Herzegovina in similar cases. She alleges that she was relieved of her duties, like her 27 colleagues, whose names she states, only because of their Bosniak origin. She states that I.Š., a teacher of Croat origin, who had not previously worked in the same school, was employed in her work post. She also alleges that her colleague, P.S., who is a Croat, has offered to have her lecture in the school instead of him, because he has an additional occupation, but the School director refused, stating that he would rather bring M.B., who is a Croat, from the regional school in Šujica than let the applicant teach in the school. The applicant stresses that the statement of the respondent Party that she was a worker on the waiting list is wrong, and she refers to the Law that was in force at the time she lost

her work, stating again that an employee of Croat origin was immediately employed in her post. She also states that, had she been an employee on the waiting list, she should have had her contributions for health insurance, pension, and invalid insurance paid, and that she was entitled to a monthly allowance. None of this has been paid to her. She further considers that the waiting list institution is of a temporary character and that the respondent Party should have resolved her working–legal status eight years ago, by 23 December 1996 at the latest, when the Presidency of Bosnia and Herzegovina published the cessation of immediate war danger. She maintains that the statement of the respondent Party that the procedure of settling her working-legal status in accordance with the decision of the Cantonal Commission is unacceptable, because the timeline within which that would actually be enforced has not been stated anywhere.

3. Case no. CH/02/11944, Mustafa Karahasan

98. The applicant's representative has not submitted additional observations.

VII. OPINION OF THE COMMISSION

99. The Commission recalls that the applications were introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the applications by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on them. 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 to the applicants' cases, from those of the Chamber, except for the composition of the Commission.

100. 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 …." and "(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."

A. Admissibility

1. Competence *ratione temporis*

101. The Commission will first address the question of its competence to consider these cases, bearing in mind that the respondent Party argues, as to the admissibility, that the issues raised in the application are outside the Commission's competence *ratione temporis*.

102. 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 (case no. CH/96/1, *Matanović*, decision on admissibility of 13 September 1996, Decisions 1996-1997).

103. Evidence relating to such events may, however, be relevant as a background to events occurring after the Agreement entered into force (case no. CH/97/42, *Eraković*, decision of 15 January 1999, paragraph 37, Decisions January-June 1999). Moreover, insofar as an applicant alleges a continuing violation of her rights after 14 December 1995, the case will fall within the Commission's competence *ratione temporis* (case no. CH/96/8, *Bastijanović*, decision of 4 February 1997, Decisions 1996-97).

104. The Commission notes that the applicants were denied the right to work at the school prior to the entry into force of the Agreement on 14 December 1995. This denial continues today. Because the applicants have never received procedural decisions to this effect, the Commission finds it established that their working relationship with the school was never validly terminated. Therefore, the applicants' grievances in respect of their inability to go back to work relate to a situation that has continued after 14 December 1995. To this extent, the situation falls within the Commission's competence *ratione temporis*.

105. Similarly, the Commission is competent to examine the fact that the applicants' salaries and related contributions have not been paid after 14 December 1995.

106. The Commission is also competent *ratione temporis* to examine any omission on the part of the 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

107. The Commission must next consider whether, for the purpose of Article VIII(2)(a) of the Agreement, any "effective remedy" was available to the applicants in respect of their complaints and, if so, whether they 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 applicants other than their applications based on the Agreement and to satisfy the Commission that the remedy was an effective one.

108. The respondent Party asserts that the applicants have not exhausted all domestic remedies because the proceedings to settle their working-legal status of the applicants with the Employer are pending in accordance with the decision of the Cantonal or Federal Commissions. The respondent Party alleges that that the applicants will have the possibility to file an objection against the Employer's procedural decision if they are not satisfied with the way in which the Employer will resolve their working-legal status, and if they are not satisfied with the procedural decision upon the objection, or if the Employer does not resolve their working-legal status within the time limits prescribed by law, they will have the possibility of court protection before a competent court.

109. Article 143, paragraph 2 of the Law on Labour provides that a person who does not work for his (former) employer anymore, but who was employed on 31 December 1991 and did not work for any other employer since that date, shall be considered to be an employee on the waiting list. According to the wording of the paragraph, this effect is restricted to persons who addressed their former employers to resume work within three months from 5 November 1999 (i.e., on or before 5 February 2000). Pursuant to paragraph 4 of this Article, their employment relations shall be regarded as terminated by force of law on 5 May 2000 if the employer does not invite them to resume work before that day. This means that the working relations of all remaining employees on the waiting list cease on 5 May 2000 (see paragraphs 1 and 4 of Article 143). All persons laid off by force of law shall only be entitled to severance pay. A statement of claim for severance pay can be filed with the Cantonal Commission.

110. The Commission primarily recalls that the applicants have not received a decision in relation to their working status, except for the applicant Semka Dizdar, a decision on termination of their working relationship, or a decision placing them on the waiting list. Regardless of that, their employment status was terminated by force of law on 5 May 2000. According to the Law on Labour, Article 143 terminates the working relations of all employees still on the waiting list on that date, without exception. Accordingly, the applicants have no remedy available that they could be required to exhaust to obtain a decision from the courts or the Commission allowing them to resume work.

111. Nevertheless, the applicants have tried to resolve their cases before the domestic judicial system, and have even succeeded in obtaining court judgments of a lower court in their favour. However, the Cantonal Court in Livno quashed the judgments upon the appeal and returned the cases to the first instance proceedings. In the renewed proceedings, the Municipal Court in Tomislavgrad suspended the proceedings and transferred the applicants' cases to the Cantonal Commission. The applicants appealed against the decision of the Municipal Court in Tomislavgrad, but the Cantonal Court in Livno upheld this decision, although the applicants' employment status was not terminated, nor were they sent to the waiting list, and the facts did not come within the scope of Article 143 or subsequent Articles of the Law on Labour. Under the circumstances, the Commission concludes there are no additional effective domestic remedies that the applicants could be required to pursue.

112. The Commission further notes that, even if the Employer complies with the decisions of the Cantonal and the Federal Commissions, the Commissions cannot provide the applicants the main satisfaction sought in their respective cases, i.e. to order the Employer to reinstate the applicants to work. Regardless of the decision of the Cantonal or the Federal Commission, the applicants would have to return again to the competent Municipal Court. Under the circumstances, the Commission concludes that the applicants cannot be required under Article VIII(2)(a) of the Agreement to pursue further proceedings before the Commissions and the courts of the respondent Party.

3. Conclusion on admissibility

113. The Commission concludes that the applications are admissible insofar as the applicants complain about discrimination in the enjoyment of their right to work, and violations of their rights to a fair hearing, in respect of acts or omissions which have either occurred or continued after the entry into force of the Agreement on 14 December 1995. The Commission declares the applications inadmissible in so far as they relate to acts and omissions that occurred prior to 14 December 1995.

B. Merits

113. Under Article XI of the Agreement the Commission must next address the question of whether the facts found 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 recognized human rights and fundamental freedoms", including the rights and freedoms provided for by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 6 of the Convention

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

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

a. Access to court

116. The Commission notes that the applicants initiated proceedings during 1998 and 1999 and obtained judgments in their favour from the Municipal Court in Tomislavgrad. However, in the proceedings upon the Employer's appeal, the Cantonal Court in Livno quashed the judgments and returned the cases to the first instance court for retrial. After that, the Municipal Court in Tomislavgrad suspended the proceedings, at the end of 2000 and the beginning of 2001, and transferred the cases to the Cantonal Commission to act in accordance with Article 143 of the Law on Labour. The applicants filed appeals against these procedural decisions of the Municipal Court

in Tomislavgrad, but the Cantonal Court in Livno rejected their appeals and upheld the procedural decisions of the first instance court.

117. The Commission considers that the procedural decisions of the Municipal Court in Tomislavgrad on termination of the proceedings leave the applicants with no access to court. The proceedings before the Cantonal and Federal Commissions are, as the Supreme Court of the Federation of Bosnia and Herzegovina has held, *sui generis* extra-judicial proceedings (see paragraph 83 above). The applicants' main complaints have not been resolved by the procedural decisions of the Commissions. These can only be resolved before the regular courts because the Cantonal Commission is restricted to the application of Article 143.

118. The Cantonal Commission could only order, as it did, a statutorily prescribed level of compensation, and it is not competent to order the applicants' reinstatement or decide upon their discrimination claims. The same is true of the Federal Commission, the venue for direct appeal of the Cantonal Commission's decision.

119. Further, it is not clear what judicial review of the Cantonal or Federal Commission's decision, if any, will be available. The Supreme Court of the Federation of Bosnia and Herzegovina has made it clear that the Commission's decision is not subject to judicial review under regular administrative dispute procedures. While the Supreme Court stated that the Commission's decisions should be subject to review by competent courts under the laws on civil procedure, it is not apparent that such review would be of any value to the present applicants. At best, the applicants could bring their claims anew in the competent Municipal Court. It appears, however, that the courts, following the law, could only uphold or repeat the referral of their cases to the Cantonal Commission, and the applicants would have no prospect of reinstatement or determination of their discrimination claims. The existing system appears to place the applicants in an endless procedural loop, with no prospect of having their substantive claims heard by a court.

120. Under the circumstances, the Commission concludes that the respondent Party has violated the applicants' right to access to court guaranteed by Article 6, paragraph 1 of the Convention.

b. Conclusion as to Article 6 of the Convention

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

2. Discrimination in the enjoyment of the right to work as well as to just and favourable conditions of work, as guaranteed by the ICESCR

122. The Commission recalls that the Chamber repeatedly held that the prohibition of discrimination is a central objective of the Dayton Peace Agreement to which it attached particular importance. The Commission adopts the same position. In accordance with Article II(2)(b) of Annex 6, the Commission is now competent to consider alleged or apparent discrimination on any grounds in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Agreement, amongst others the International Covenant on Economic, Social and Cultural Rights (case no. CH/97/67, *Zahirović,* decision on admissibility and merits, delivered on 8 July 1999, paragraph 59, Decisions January-July 1999; case no. CH/01/7351, *Kraljević*, decision on admissibility and merits, delivered on 12 April 2002, paragraph 61, Decisions January-June 2002).

123. The Commission further notes that the basis of discrimination in Bosnia and Herzegovina often rests upon the perceived ethnic or national differences expressed in terms such as Bosniak, Croat and Serb. Therefore, the Commission uses this terminology in discrimination cases without

endorsing it (case no. CH/99/2696, *Brkić*, decision on the admissibility and merits, delivered on 12 October 2001, paragraph 64, Decisions July-December 2001).

124. The Commission will consider allegations of discrimination under Article II(2)(b) of the Agreement in relation to Articles 6(1) and 7(a)(i)(ii) of the ICESCR which, in relevant part, read as follows:

> Article 6(1)
>
> "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."
>
> Article 7
>
> "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
>
> (a) Remuneration which provides all workers, as a minimum, with:
>
> (i) fair wages and equal remuneration for work of equal value without distinction of any kind, …
>
> (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant; …"

a. Impugned acts and omissions

125. Acts and omissions possibly implicating the responsibility of the Federation under the Agreement include the failure to re-employ the applicants after the end of the armed conflict and the hiring of other teachers by the school into positions that the applicants held before and during the war, until they were denied the right to work.

126. These acts affect the applicants' enjoyment of the rights guaranteed under Articles 6(1) and 7(a)(i) and (ii) of the ICESCR. The Commission will accordingly examine whether the respondent Party has failed to meet its positive obligation to secure protection of these rights without discrimination.

b. Differential treatment and possible justification thereof

127. The Commission considers it necessary first to determine whether the applicants were treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.

128. There is a particular onus on the respondent Party to justify otherwise prohibited differential treatment which is based on any of the grounds explicitly enumerated in Article II(2)(b) of the Agreement (case no. CH/99/2696, *Brkić*, decision on the admissibility and merits, delivered on 12 October 2001, paragraph 64, Decisions July-December 2001).

129. The applicants argue that they were not reinstated to work only because of their Bosniak origin. The respondent Party does not dispute that the applicants were employed with the Employer. Further, the respondent Party has not contested the applicants' allegations that employees of Croat origin with less working experience, or even teachers that had been retired, were employed to their work posts after the applicants were denied the right to work. The respondent Party asserts that the applicants' employment was not terminated but that they were

put on the waiting list.

130. Article 23 of the Law on Fundamental Rights in Labour Relations required that “a written decision on the realization of a worker’s individual rights, obligations and responsibilities shall be delivered to the worker obligatorily". The Commission notes that the employer has never identified or explained the reasons for which the applicants’ work was eventually not needed, except in the case of the applicant Semka Dizdar, nor has a decision placing the applicants on the waiting list ever been issued and delivered to the applicants. The respondent Party, in its observations does not dispute that the school has not issued a written decision on the applicants’ working status and has not given any explanation of such treatment of the applicants. The respondent Party explains that the applicants were orally put on the waiting list, but, according to the Law, a written decision should have been issued and delivered to the applicants. Because of that, their legal and working status was undefined and has remained so to this day.

131. Furthermore, Article 7 of the Law on Labour Relations provided that “an employee whose work becomes temporarily unnecessary due to a reduced scope of work during the state of war or in case of immediate danger of war may be put on the waiting list no longer than until the cessation of these circumstances”. The Commission notes that these circumstances ceased on 22 December 1995 when the Presidency of the Republic of Bosnia and Herzegovina issued a Decision on Revoking the State of War. Also, on 19 December 1996 the Parliament of the Federation of Bosnia and Herzegovina issued a Decision on Cessation of Application of the Decision on Declaring an Imminent Threat of War on the Territory of the Federation of Bosnia and Herzegovina. The Commission further notes that, despite the fact that the unusual circumstances had ceased, the behaviour of the Employer continued, and the applicants were not allowed to return to work. Therefore, the behaviour of the Employer constitutes acts and omissions that were not in accordance with Federation law.

132. The Commission further notes that the applicants’ Employer is not a company whose business could be influenced by conditions on the market, but an educational institution. If there was a real necessity to put the applicants on the waiting list because of reduced amount of work, or any other reason, that fact should have been explained and identified by the school. Also, the school lacked personnel with the applicants’ qualifications, but it still did not allow them to work. Instead, according to the applicants’ allegations that the respondent Party has not disputed, the school hired employees of Croat origin with lesser qualifications, or retired teachers, to perform the duties of the applicants’ jobs. After the war the school continued to deny the applicants’ their right to work. Hence, the school administration was willing to exclude experienced teachers on the grounds of their Bosniak origin and to hire inexperienced and retired teachers of Croat origin instead. The Commission considers this kind of differential treatment of the applicants unjustified and directed to the goal of preserving the “ethnic purity” of the school. This behaviour constitutes sufficient grounds for arriving at the conclusion that the applicants have been discriminated against on the ground of their national or ethnic origin.

133. The Commission considers the respondent Party responsible for this discrimination. The applicants’ Employer is a regular primary school founded by the municipality of Tomislavgrad, which means that the school is a public institution. The respondent Party has influence over the activities of the school and could have prevented such discrimination.

134. The Commission further notes that the Municipal Court in Tomislavgrad issued judgments in favour of the applicants, but these judgments were quashed by the Cantonal Court in Livno. After that the Municipal Court in Tomislavgrad, acting again in the cases pursuant to the reasoning of the Cantonal Court’s decision in Livno, suspended the proceedings and transferred the case to the Cantonal Commission. Hence, the courts of the Federation denied the applicants’ claims for more than three years, putting them in a procedural loop, and finally treated them as employees on the waiting list in manifest violation of the law, thus perpetuating the denial of their right to work.

135. The Commission recalls that the Constitutional Court of Bosnia and Herzegovina established in its decision U-038/02 of 19 September 2003 that the effect of implementation of Article 143 of the Law on Labour would have larger consequences for the population of Canton 10 who were not of Croat origin, than for the Croat population who were put on the waiting list or dismissed during the war, i.e. that the influence of the implementation of Article 143 of the Law on Labour in Canton 10 was discriminatory against citizens who are not of Croat origin (see the decision of the Constitutional Court number U-038/02 of 19 September 2003, published in the Official Gazette of Bosnia and Herzegovina no. 8/04, paragraphs 64-65).

136. In light of all these considerations, the Commission finds that the applicants have been subjected to differential treatment in comparison with their colleagues of Croat origin. No legitimate aims have been put forward to justify this differential treatment. There is no evidence showing that the applicants' treatment has been objectively justified pursuant to any legal provisions during or after the armed conflict. The respondent Party has failed to show that its authorities provided opportunities for a further investigation of the matter in order to remedy possible discriminatory treatment. The Commission, therefore, finds that the Federation authorities have actively discriminated against the applicants through the administrative bodies of the school due to their Bosniak descent.

c. Conclusion as to discrimination

137. The Chamber concludes that the applicants have been discriminated against on the basis of their national or ethnic origin in the enjoyment of their right to work and rights to fair and favourable conditions of work as guaranteed under Articles 6 and 7 of the ICESCR, and thereby the Federation has violated its obligations under Article I of the Agreement to ensure to all persons under its jurisdiction, without discrimination, the rights guaranteed under the ICESCR.

3. Conclusion on the merits

138. The Commission concludes that the applicants' rights guaranteed under Article 6 of the Convention have been violated and that they have been discriminated against in enjoyment of their rights under Article 6(1) and Article 7(a) of the ICESCR.

VIII. REMEDIES

139. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy the established breaches of the Agreement. In this connection the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

140. In their applications the applicants seek reinstatement into their work positions. The applicants further request that the Federation be ordered to compensate them for lost income in the amount of 500 KM monthly from the day they ceased to work until their reinstatement to work, as well as related contributions.

141. The respondent Party objects to the claim and submits that the claim is unjustified and ill-founded, particularly as far as it relates to the period before 14 December 1995, as the date of entry into force of the Agreement.

142. The Commission has found the respondent Party to be in breach of its obligations under the Agreement by violating the applicants' right to access to court under Article 6(1) of the Convention and discriminating against them on the basis of their national origin in the enjoyment of their right to work under Articles 6(1) and 7(a)(i) and (ii) of the ICESCR. Therefore, the

Commission finds it appropriate to order remedies, including the payment of monetary compensation.

143. The Commission will order the respondent Party to take prompt measures to ensure that the applicants are no longer discriminated against in their right to work and to fair and favourable conditions of work, and that they be offered the possibility, within one month of the receipt of this decision, to resume their previous positions or other positions appropriate to their skills and training, with salaries commensurate to their previous positions, and under conditions equal to those enjoyed by other employees.

144. The Commission further finds it appropriate to award to the applicants monetary compensation for their lost income. The applicants requested that the respondent Party be ordered to pay them compensations in the amount of 500 KM per month for lost income, as well as contributions to the pension and disability insurance fund for the whole period during which they were prevented from working until the date of their reinstatement to work. The respondent Party objects against these requests and states that they are unjustified and ill-founded, especially as to the part related to the period before 14 December 1995, the date when the Agreement entered into force.

145. The Commission has already stated that it is not competent to order compensation for the damage that occurred before the Agreement entered into force. Therefore the Commission will order the respondent Party to pay compensation only for the period from 14 December 1995 on.

146. The Commission will order the respondent Party to calculate and pay all benefits, including unpaid contributions to the applicants' pension and health insurance funds, from 1 January 1996 through the dates of their reinstatement, into the appropriate funds for the applicants' benefits, within one month of the date of receipt of this decision.

147. The Commission will further order the respondent Party to pay each applicant, as compensation for lost income for the period from 1 January 1996 through 30 November 2004. According to the Official Gazette of the Federation of Bosnia and Herzegovina (nos. 5/97, 4/98, 5/99, 50/99, 51/00, 6/02, 6/03 and 10/04), an net average salary in "non-economic employment relationships" (including school teachers) amounted to 239 KM in 1996, 348 KM in 1997, 406 KM in 1998, 435.80 KM in 1999, 412.72 KM in 2000, 443,26 KM in 2001, 482, 71 KM in 2002, and 524, 18 KM in 2003.[3] The Commission considers that the applicants' claims of 500 KM for each month of unemployment plus corresponding contributions for the same period are too high. The Commission considers, however, that a sum of 300 KM per month is adequate compensation for lost incomes for the relevant time period (*see, e.g.*, case no. CH/97/50, *Rajić,* decision on admissibility and merits, delivered on 7 April 2000, Decisions January-June 2000; case no. CH/98/1018, *Pogarčić*, decision on admissibility and merits, delivered on 6 April 2001, Decisions January-June 2001; case no. CH/99/2696, *Brkić*, decision on admissibility and merits, delivered on 12 October 2001, Decisions and reports July-December 2001; and case no. CH/00/3476, *M.M.*, decision on admissibility and merits, delivered on 7 March 2003, Decisions January-June 2003). From January 1996 through November 2004, the total amount of lost incomes for each applicant individually amounts to 32,100 KM (thirty-two thousand one hundred convertible marks). Therefore, the Commission will order the respondent Party to pay each applicant 32,100 KM as compensation for lost income from January 1996 through November 2004, to be paid within one month of the date of receipt of this decision.

148. If the applicants are not offered the possibility to return to work within one month after this decision has been received, the Commission will further order that they be paid, at the end of each month, the amount of 20 KM for every day (except Saturday and Sunday) until they are allowed to resume their previous positions or other positions appropriate to their skills and training, with

[3] All categories of employees for 2000, 2001, 2002 and 2003 are calculated together.

salaries commensurate to their previous positions, and under conditions equal to those enjoyed by other employees.

149. Additionally, the Commission will award ten percent (10%) interest per annum on the sums referred to in paragraphs 147 and 148 above. This interest shall be paid from the due date of each payment until the date of settlement in full.

IX. CONCLUSION

150. For the above reasons, the Commission decides:

1. unanimously, to declare the applications admissible insofar as they relate to alleged violations of human rights after 14 December 1995;

2. unanimously, to declare the remaining portions of the applications inadmissible;

3. unanimously, that the applicants' rights to access to court under Article 6, paragraph 1 of the European Convention on Human Rights have been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, that the applicants have been discriminated against in the enjoyment of their right to work and related rights guaranteed under Articles 6(1) and 7(a)(i) and (ii) of the International Covenant on Economic, Social and Cultural Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the applicants are no longer discriminated against in their right to work and fair and favourable conditions of work, and that they be offered the possibility, within one month of the respondent Party's receipt of this decision, to resume their previous positions or other positions appropriate to their skills and training, with salaries commensurate to their previous positions, and under conditions equal to those enjoyed by other employees;

6. unanimously, to order the Federation of Bosnia and Herzegovina to calculate and pay all benefits, including unpaid contributions to the applicants' pension and health insurance funds, from 1 January 1996 through the dates of their reinstatement into employment, into the appropriate funds for the applicants' benefit, within one month of the respondent Party's receipt of this decision;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay each applicant 32,100 KM (thirty two thousand one hundred convertible marks) within one month of the respondent Party's receipt of this decision as compensation for lost income;

8. unanimously, to order the Federation of Bosnia and Herzegovina, if the applicants are not reinstated into employment within one month of the respondent Party's receipt of this decision, to pay each applicant, at the end of each month, the amount of 20 KM for every day (except Saturdays and Sundays) until the applicants are allowed to resume their previous positions or other positions appropriate to their skills and training, with salaries commensurate to their previous positions, and under conditions equal to those enjoyed by other employees;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay each applicant simple interest at a rate of ten (10) percent per annum over the sums stated in conclusion nos. 7 and 8 or any unpaid portion thereof from the due date for each payment until the date of settlement in full;

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Commission, or its successor institution, within three months of the date of receipt of this decision, 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