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

Case no. CH/01/8582

M. J.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 September 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER, Vice President
Mr. Giovanni GRASSO
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant, who is of Serb origin, was employed by the Company DD "Frizer" in Sarajevo (hereinafter: "the employer" or "Frizer"). During the armed conflict in Bosnia and Herzegovina, the employer terminated her employment. After the cessation of the armed conflict, the applicant initiated court proceedings requesting reinstatement into her work. The court issued a judgment, ordering her reinstatement, which subsequently became final and binding. The employer refused to comply with the judgment, however, and the applicant initiated enforcement proceedings. To date, the court judgment has not been enforced. The applicant alleges violations of her right to a fair trial within a reasonable time and her right to work, as well her right to be free from discrimination in the enjoyment of those rights.

2. The case primarily raises issues under Article 6 paragraph 1 of the European Convention on Human Rights (the "Convention") with respect to the length of the proceedings.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 14 December 2001.

4. On 25 February 2002, the applicant requested the Chamber to order the respondent Party, as a provisional measure, immediately to reinstate her to her employment. On 4 March 2002, the Chamber decided not to order the provisional measure.

5. The Chamber transmitted the case to the respondent Party on 22 April 2002 under Article 6 of the Convention and under Article II(2)(b) of the Agreement in conjunction with Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights and Articles 1(1) and 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

6. On 23 May 2002, the Chamber received the observations on admissibility and merits from the respondent Party.

7. On 12 June 2002, the Chamber received the applicant's observations in reply.

8. The respondent Party submitted additional information on 24 July 2002, 12 November 2002, 7 March 2003, and 25 April 2003.

9. The applicant submitted further observations on 31 January 2002, 3 December 2002, 11 April 2003, 3 May 2003, and 21 July 2003.

10. The Chamber considered the admissibility and merits of the case on 4 March and 8 April 2002, 2 July 2003, and 5 September 2003. The Chamber adopted the present decision on the latter date.

III. FACTS

11. Before the armed conflict, the applicant was employed with "Frizer" from Sarajevo as an Assistant Manager. On 2 May 1992, she stopped coming to work. After the events of May and June 1992, the employer's then-established Crisis Staff, and afterwards the Steering Board, issued a decision on termination of employment for all employees, including the applicant, who had left work and did not comply with the Decision on Labour Obligations. The decision terminating the applicant's employment was issued on 8 July 1992. The decision was delivered to the applicant on 20 June 1994 upon her return to Sarajevo; prior to that it had been posted on a bulletin board.

12. On 13 December 1995 the applicant filed an action before the First Instance Court I in Sarajevo against the employer. She requested annulment of the procedural decision of 8 July 1992 and reinstatement into a position commensurate with her qualifications.

13. On 28 October 1998, the Municipal Court I in Sarajevo issued a judgment annulling the procedural decision of 8 July 1992 and ordering the employer to reinstate the applicant into her work within fifteen days. The judgment became final and binding on 24 December 1998.

14. On 13 January 1999, the applicant addressed the employer, requesting compliance with the judgment.

15. On 13 February 1999, the applicant received a reply from "Frizer" stating as follows:

> "The judgment you refer to in your request is entirely unclear and as such not enforceable since the Court only stated that the procedural decision of 8 July 1992 was quashed and that the plaintiff was to be reassigned to a job commensurate with her qualifications, and that all the rights arising from the labour relations should be re-established. The judgment is not enforceable since in the current circumstances there are no legal provisions under which your case might be legally solved. Actually, your qualifications are related to social sciences (philosophy and psychology), and there is not such a position in "Frizer", and there will never be."

16. Since the employer did not comply with its obligations within the judgment's 15-day time limit, the applicant initiated enforcement proceedings before the Municipal Court I in Sarajevo on 8 February 1999.

17. On 12 February 1999, the Court issued a procedural decision ordering enforcement of the judgment. The employer filed an objection against the procedural decision. On 7 June 1999, the Court issued another decision rendering the procedural decision of 12 February 1999 out of force and ordering the applicant to harmonise her enforcement proposal with the judgment. On 22 June 1999, the applicant complied with the court order and submitted a new enforcement proposal to the Court.

18. On 25 January 2000, the Court issued a procedural decision ordering the enforcement of the judgment. The Court ordered the employer to reinstate the applicant to work and to assign her to a position commensurate with her qualifications. The employer was also ordered to re-establish the applicant's rights arising from her labour relations and to pay her compensation for lost salary from the date the judgment became valid until her reinstatement to work. The time limit for the enforcement was eight days.

19. On 10 February 2000, the employer filed an objection against the procedural decision ordering enforcement.

20. On 24 August 2000, the applicant addressed the Commission for Appointment of Judges, informing it that judge A.D. had not complied with the principles of impartiality and independence.

21. The applicant addressed the Organisation for Security and Co-operation in Europe ("OSCE"), the Office of the High Representative ("OHR"), and the Ombudsmen of the Federation of Bosnia and Herzegovina on several occasions, asking for help in enforcing the judgment and reinstating her to work.

22. On 10 February 2001, the Court issued a procedural decision rejecting the employer's objection as ill-founded. On 20 February 2001, the employer appealed to the Cantonal Court against this procedural decision.

23. On 13 June 2001, the Cantonal Court issued a procedural decision rejecting the employer's appeal and upholding the first instance procedural decision.

24. On 30 August 2001 and 4 September 2001, the applicant addressed the Municipal Court I in Sarajevo, urging enforcement of the procedural decision of 25 January 2000.

25. On 23 October 2001, the applicant addressed the President of the Municipal Court I in Sarajevo, asking him to take action to resolve her case, since she had already held a valid and enforceable judgment for three years.

26. On 21 November 2001, the Court issued a procedural decision ordering the employer to comply with the procedural decision of 25 January 2000 within 30 days. The procedural decision provided that, if the employer failed to fulfil its obligations under the procedural decision, then it was ordered to pay a fine in the amount of 7.50 KM in total.

27. On 3 October 2001, the Municipal Court I in Sarajevo requested the competent Public Prosecutor to initiate criminal proceedings against the responsible person within "Frizer" for failure to enforce the court's decision on reinstatement to work. On 4 October 2001, the applicant personally brought criminal charges against the director of "Frizer".

28. On 16 November 2001, the Municipal Prosecutor's Office I in Sarajevo indicted the director of the company.

29. On 22 November 2001, the applicant sent an urgent letter to the President of the Municipal Court I in Sarajevo, again requesting enforcement of the judgment. The applicant asked the Court to coerce the employer's compliance with the judgment by all legal means, including blocking its bank account, and levying fines against the employer and the individuals in charge, with the possibility of further punishment.

30. On 10 December 2001, upon the applicant's personal request, a permanent court financial expert issued a finding and expert opinion according to which the employer was obliged to pay the applicant the total amount of 12,720.51 KM plus interest from the date of maturity until the date of payment at the statutory interest rate[1].

31. On 14 January 2002, the Municipal Court I in Sarajevo found M.Z., the director of "Frizer", guilty of the criminal offence of failure to enforce the decision on reinstatement to work. M.Z. received a suspended prison sentence of one month, which was not to be enforced unless he committed a new criminal offence within one year.

32. On 16 January 2002, for the purpose of enforcing the judgment, the employer invited the applicant to "visit the manager's office to take and fill in a form with personal and other information for persons who perform jobs related to public defence". The respondent Party alleges that the director of "Frizer" sought the consent of the Municipality Stari Grad – Sarajevo that the applicant be offered a position as an associate for public defence affairs in that Municipality.

33. On 22 January 2002, the applicant addressed the manager of "Frizer" in writing. In her submission, the applicant stated that she had responded to the invitation with a witness. She alleged that she did not find the manager at the business premises and the employees who were present could not inform her when he would be there. On that occasion, the applicant was given the form, which, according to her opinion, could not pertain to her. In her submission, the applicant points out that, according to the court judgment, her labour relations were never terminated because the Company's decision on termination of her employment was quashed. The applicant also requested the manager immediately to assign her to an acceptable position pursuant to the court decisions, *i.e.* to abide by the decisions.

34. On an unknown date, the employer appealed to the Cantonal Court in Sarajevo against the Municipal Court I procedural decision of 21 November 2001. On 27 February 2002, the Cantonal Court rejected the employer's appeal and confirmed the first instance procedural decision.

35. On 16 January 2003, the Municipal Court I in Sarajevo sent a letter to the applicant's former representative, requesting a statement as to whether the employer had complied with the procedural decision of 25 January 2000. The applicant informed the Court that the company had not complied with the judgment, and she reminded the Court that she had cancelled the lawyer's authorisation, as she had previously informed the Court on 19 March 2001.

[1] Since the court expert did not dispose of comparative data and salaries acquired by the employees (holiday cash grant, meal allowance, transport allowance), data on average salaries in the Federation of Bosnia and Herzegovina, established by Federation Institute for Statistics, is used in judicial practice.

36. The enforcement proceedings remain pending and the applicant has not yet been reinstated to her work.

IV. RELEVANT LEGAL PROVISIONS

A. Law on Fundamental Rights in Labour Relations

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

> Article 23
>
> "(2) A written decision on the realisation of a worker's individual rights, obligations and responsibilities shall be delivered to the worker obligatorily."

B. Law on Labour Relations

38. The Law on Labour Relations was published in the Official Gazette of the Republic of Bosnia and Herzegovina (OG RBiH no. 21/92). 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). 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 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.
> ...
> Unpaid leave can last until the termination of the circumstances mentioned above, if the employee demonstrates, within 15 days after the termination of these circumstances, that he or she was not able to come to work earlier. During the unpaid leave all rights and obligations of the employee under the employment are suspended."

C. Law on Enforcement Procedure

39. The Law on Enforcement Procedure of the former Socialist Federal Republic of Yugoslavia which was taken over as the law of the Republic of Bosnia and Herzegovina (OG SFRY nos. 20/78, 6/82, 74/87, 57/89, 20/90, 35/92; Constitutional Court of Yugoslavia II N. 109/91 – OG SFRY no. 63/91; amended by OG RBiH nos. 2/92, 16/92 and 13/94), as amended, was in force until 19 July 2003 when the new Law on Enforcement Procedure of the Federation of Bosnia and Herzegovina(Official Gazette of the Federation of Bosnia and Herzegovina no.32/03) entered into force.[2]

[2] The new Law on Enforcement Procedure (OG FBiH no. 32/03) will not start to apply until 60 days after its entry into force. Therefore, in this decision, the provisions of the "old" Law on Enforcement Procedure are quoted.

40. Article 2 of the Law on Enforcement Procedure stated that enforcement is initiated at the request of the person in whose favour a court decision has issued. Article 3, regarding "competencies", provided that regular courts shall carry out enforcement, and Article 7 stated that the competent court shall issue a decision on enforcement.

41. Article 14 of the Law provided that the provisions of the Law on Civil Procedure also apply in enforcement proceedings, if the Law on Enforcement does not provide otherwise.

42. With respect to enforceability of a decision, Article 18 paragraph 1 provided as follows:

> "A court decision or a decision issued in petty offence proceedings shall be enforceable if it is final and binding and if the time limit for voluntary fulfilment of the debtor's obligation has expired."

43. Article 10 of the Law on Enforcement Procedure stated that "in enforcement proceedings, the court is obliged to act urgently."

44. More specifically, Chapters XVII and XVIII of the Law provided as follows:

> Chapter 17
> "Obligation to perform an act…
>
> …
>
> An act that can be done only by the debtor"
>
> Article 225
>
> "(1) If according to the enforceable act the debtor is obliged to perform an act that cannot be done by another person, the court …will set a reasonable time limit for the debtor to perform an act.
> (2) By a procedural decision on enforcement the court will at the same time set the fine, if the debtor does not perform the act within the set time limit….
> (3) If the debtor does not comply with his obligation within set time limit, the court will *ex officio* enforce the decision on the fine.
> (4) In that case the court will at the same time issue a new procedural decision in which it will set a new time limit for the debtor to comply with his obligation and set a new [larger] fine…, if he does not comply with his obligation within the newly set time limit.
> (5) …the court will further act in the way prescribed in paragraphs 2, 3 and 4 of this Article until the total amount of all fines reaches the tenfold amount of the first fine."
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> Chapter 18
> "Reinstatement of the employee to work
>
> …
>
> Procedure for conducting the enforcement"
>
> Article 231
>
> "The enforcement upon the title of enforcement upon which the company is obliged to reinstate the employee to work … is conducted by pronouncing the fine to "the company". The fine is pronounced according to the provisions of this Law on performing an act that can be done only by the debtor."
>
> Article 232
>
> "(1) The employee who filed a proposal to be reinstated to his work can propose that the court issue a decision ordering the company to pay him compensation for the salaries matured since the day of the validity of the judgment until he is reinstated to work. …
> (3) The decision adopting the proposal for compensation has the force of the enforcement decision. …
> (5) The compensation for the monthly salary is determined in the amounts that the employee would be entitled to if he worked."

D. Law on Civil Proceedings

45. Article 426 of the Law on Civil Proceedings (OGFBiH no. 42/98 and 3/99) states that, in disputes concerning employment, the court shall pay special attention to the need to resolve such disputes as a matter of urgency.

V. COMPLAINTS

46. The applicant complains of a violation of her right to a fair hearing within a reasonable time under Article 6 of the Convention.

47. It appears that the application raises issues under Article 6 paragraph 1 of the Convention and issues of discrimination in relation to the rights guaranteed by Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights and Articles 1(1) and 5 of the Convention on the Elimination of All Forms of Racial Discrimination.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the admissibility

48. The respondent Party asserts that the application should be declared inadmissible *ratione personae* because the employer is neither a Party to the Agreement nor an official or a body of the respondent Party or any Canton or Municipality, or any individual acting under the authority of such official or organ. Because the employer was not acting under the respondent Party's authority, the respondent Party cannot be held responsible for its actions within the meaning of Article II of the Agreement.

49. The respondent Party also argues that the applicant only submitted her application two years and 19 days after the date of the effectiveness of the Municipal Court's decision of 24 December 1998. Therefore, the respondent Party objects to the admissibility with regard to the six-month time limit in Article VIII(2) of the Agreement. The respondent Party also argues that, even if the decision on enforcement of 25 January 2000 is regarded as the final decision, the six-month time limit would still have expired because the application was submitted one year and 19 days after that decision.

2. As to the merits

50. The respondent Party alleges that, according to the reasoning of the Municipal Court I's criminal judgment of 14 January 2002, the applicant refused to fill in the form on personal and other data for persons working in jobs connected with defence, and "Frizer" intended to assign her to the position of a national defence officer. Thus, the respondent Party asserts, the applicant was given the chance to be employed in a position commensurate with her qualifications, but, by her own behaviour, she prevented herself from realising this opportunity.

51. The respondent Party points out that the applicant did not act in accordance with the Municipal Court's order to harmonise the proposal on enforcement of 8 February 1999 with the operative section of the judgment of 28 October 1998 within 30 days. She only did it four months and 14 days after the Municipal Court issued the procedural decision of 25 January 2000.

52. The respondent Party alleges that, considering the chronology of the courts' conduct, the complexity of the case, the behaviour of the applicant and the employer, and other circumstances, there has not been any violation of the applicant's right to a fair hearing within a reasonable time under Article 6 of the Convention.

53. With regard to discrimination in the enjoyment of the rights guaranteed by Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights and Articles 1(1) and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, the respondent Party asserts that the applicant has not been discriminated against in violation of Article I(14) of the Agreement, and she has not substantiated her allegations in that respect.

B. The applicant

54. The applicant contests the allegations of the respondent Party. She points out that the respondent Party cannot refer to the operative section of the criminal judgment of the Municipal Court I of 14 January 2002, since it is not effective. She also states that "Frizer" appealed to the Cantonal Court against the Municipal Court's procedural decision of 12 November 2001 and that the Cantonal Court, by its procedural decision of 27 February 2002, rejected the appeal as ill-founded. From these facts it is obvious that "Frizer" does not want to comply with the judgment.

55. The applicant contests the Federation's objection *ratione personae* because the respondent Party is obliged to enforce the judgment issued by the domestic court. The applicant alleges that because the judgment still has not been enforced even three and one-half years after it became final and binding, there has been a clear violation of Article 6 of the Convention. The applicant submits that the violation of the right to a fair hearing is obvious from the court's pronouncement of a fine in the negligible amount of 7.50 KM against "Frizer" for not reinstating the applicant to her work.

56. The applicant also contests the respondent Party's allegations that she contributed to the length of the proceedings, because she submitted the enforcement proposal to the Court on 8 February 1999. The applicant claims that the court's judgment became effective on 24 December 1998. She submitted her proposal for enforcement to the employer on 14 January 1999 (15 days after the expiry of the time limit set for the voluntarily enforcement). Since the defendant did not comply with its obligation within 15 days, she submitted an enforcement proposal to the Court on 8 February 1999. The applicant alleges that from 24 December 1998 to 8 February 1999, one month and 15 days elapsed, not three months and 10 days, as alleged by the respondent Party.

57. The applicant contests the respondent Party's allegations that she and her authorised representative acted "without interest," and she points out that she could not respond to the court's summonses because they were directed to her representative, whose power of attorney she had cancelled on 19 March 2001. In her letter, the applicant alleges that she is not interested in initiating criminal proceedings against the responsible person within "Frizer" and that her only interest is final enforcement of the 28 October 1998 judgment. The applicant submits that "the exclusive intention of conducting criminal proceedings is to delay the court's decisions".

58. The applicant states that she has never been given a copy of the 4 April 2003 appeal, as the respondent Party claims.

59. Regarding the respondent Party's position on discrimination, the applicant states that she assumes the employer does not want to comply with its obligations under the valid judgment because she is of Serb origin and married to a man of Croat origin. She also argues that "there is no need to contest the allegations of the respondent Party", since it may be concluded from the documents attached to her application that her rights were violated.

VII. OPINION OF THE CHAMBER

A. Admissibility

60. Before considering the merits of the case, the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) ... that the application has been filed with the Commission within six months from such date on which the final

decision was taken" and "(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Competence *ratione personae*

61. The respondent Party asserts that the application should be declared inadmissible *ratione personae* because the employer is neither a Party to the Agreement nor an official or a body of the respondent Party or any Canton or Municipality. Because the employer was not acting under the respondent Party's authority, the respondent Party cannot be held responsible for its actions within the meaning of Article II of the Agreement.

62. The Chamber notes that the applicant primarily complains of non-enforcement of the valid court judgment. According to the provisions of Article 3 of the Law on Enforcement Procedure, regular courts are competent to order and conduct enforcement. Therefore, the respondent Party is responsible for the actions or inaction of the courts within its jurisdiction, and the Federation's objection must be rejected.

63. The Chamber recalls the Parties' positive obligation under Article I of the Agreement to secure the rights guaranteed therein. Such protection through the executive and judicial branches falls within the responsibilities of the Federation as one of the Entities of Bosnia and Herzegovina.

64. For the above reasons, the Chamber rejects the Federation's argument that it cannot be held responsible for the impugned acts in question in relation to the applicant's complaint of non-enforcement of a final and binding court judgment.

65. Regarding the respondent Party's objection *ratione personae* in relation to the applicant's discrimination claim, the Chamber finds that, for the reasons set out below (see paragraph 68 below) it is not necessary to decide this question.

2. Compliance with the six-month rule

66. The respondent Party considers that the application is inadmissible because the applicant did not lodge the application within six months of the date the Municipal Court's judgment of 28 October 1998 became valid. According to the Federation, this was the relevant final decision in this case.

67. The Chamber notes that the complaint in the present case does not concern the judgment of 28 October 1998, but the respondent Party's failure to enforce that judgment, a situation that has lasted for nearly five years and is still continuing. In such a case, the six-month period starts to run from the moment when the situation complained of ceases to exist (see, *e.g.*, case nos. CH/98/875, 939 and 951, *Živković, Sarić and Jovanović*, decision on admissibility and merits of 12 May 2000, paragraph 58, Decisions January – June 2000). This has not yet occurred and the six-month time limit is therefore inapplicable in the applicant's case. The objection is rejected.

3. Discrimination

68. The applicant states that she assumes that her employer does not want to comply with its obligation under the judgment and reinstate her to work because of her Serb origin. In her submissions the applicant merely invokes discrimination but does not allege in what way she was discriminated against or submit any evidence of discrimination. The Chamber does not note any *prima facie* discrimination in the enjoyment of her right to work and finds no evidence of discrimination arising from the documents submitted by the applicant.

69. The Chamber recalls that, for discrimination to be established, the facts of the case must show that the applicant has been subjected to differential treatment based on a prohibited ground. Therefore, credible evidence must be provided in each case of alleged discrimination. In this case the applicant has failed to meet the standard of proof required to substantiate an allegation of discrimination that her national origin or any other forbidden ground motivated the employer not to comply with its obligations under the judgment or motivated the courts not to enforce the final and

binding judgment. Neither is it apparent from the facts of the case that the applicant has been a victim of discrimination on any of the grounds set out in Article II(2)(b) of the Agreement. In these circumstances, the Chamber finds that the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement with respect to the complaint of discrimination. Accordingly, the Chamber declares this part of the application inadmissible pursuant to Article VIII(2)(c) of the Agreement.

4. Conclusion as to admissibility

70. The Chamber concludes that the application is admissible insofar as the applicant complains of violations of her right to a fair hearing within a reasonable time under Article 6 paragraph 1 of the Convention. The Chamber declares the remainder of the application inadmissible.

B. Merits

71. Under Article XI of the Agreement, the Chamber must next address the question of whether the established facts 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. Article 6 of the Convention

72. The applicant complains about the length of proceedings before the domestic courts, particularly the non-enforcement of a final and binding judgment. The Chamber will now consider the allegation that there has been a violation of Article 6 of the Convention because the court judgment ordering the applicant's reinstatement to work has not been enforced 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. ..."

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

a) Applicability of Article 6 in this case

74. The Chamber recalls that, in its jurisprudence, it has considered that disputes relating to private employment relations concern "civil rights and obligations." The Chamber further notes that this point has not been placed at issue by the parties. The applicant's rights under the final and binding court judgment ordering her reinstatement to work constitute "civil rights" within the meaning of Article 6 paragraph 1 of the Convention. Moreover, the Chamber has previously held that when the competent authorities take no action to enforce a final and binding court decision, particularly when the applicable law provides for such action, the authorities deprive Article 6 paragraph 1 "of all useful effect", resulting in a violation of that Article (case no. CH/96/17, *Blentić*, decision on admissibility and merits of 5 November 1997, paragraph 35, Decisions March 1996–December 1997; case no. CH/97/28, *M.J.*, decision on admissibility and merits of 7 November 1997, paragraph 36, Decisions March 1996–December 1997; case no. CH/96/27, *Bejdić*, decision on admissibility and merits of 2 December 1997, paragraph 42, Decisions 1998; case no. CH/99/1859, *Jeličić*, decision on admissibility and merits of 12 January 2000, paragraphs 25-27, Decisions January–June 2000; case no. CH/97/104 *et al., Todorović and others*, decision on admissibility and merits of 7 October 2002, paragraphs 156-158, Decisions July–December 2002).

75. Enforcement proceedings related to court judgments concerning civil rights and obligations must comply with the requirements of Article 6(1) of the Convention. Consequently, the Chamber considers that Article 6 of the Convention is applicable in this case.

b) Length of the proceedings

76. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The Chamber notes that the court judgment of 28 October 1998 is fully binding and enforceable, which is not disputed by the respondent Party. The court ordered the enforcement, but it took insufficient action to carry out that enforcement. The applicant initiated enforcement proceedings before the Municipal Court I in Sarajevo on 8 February 1999, and the judgment has not been enforced to date. Thus, the enforcement proceedings have lasted more than four years and are still pending.

77. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and the other circumstances of the case (*see, e.g.,* case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with reference to the corresponding case law of the European Court of Human Rights).

78. The respondent Party alleges that the applicant contributed to the length of the enforcement proceedings, but the Chamber cannot agree with this position. On the contrary, the applicant has made use of all the possible remedies when faced with court inaction, and she has tried to obtain enforcement, but to no avail. The fact that she refused to sign forms concerning a possible position with the Municipality cannot count to her detriment because, under the judgment, the employer was obliged to reinstate her into work with "Frizer".

79. The Chamber notes that the Municipal Court fined the employer 7.50 KM, an amount so small that it hardly could have had any effect. According to Article 225(5) of the Law on Enforcement, however, the court could have repeated its fine until the total amount reached tenfold the amount of the original fine. The court was obliged to act efficiently and take any action provided by law to enforce the judgment. Instead, the court fined the employer on 21 November 2001 and waited more than one year to establish whether the employer had complied with its obligation. Not until January 2003 did the court ask the applicant whether she had been reinstated to her work, and even then it asked her former lawyer, whose power of attorney the applicant had cancelled two years before. The court must have known this fact, because the applicant had informed it in writing on 19 March 2001. In fact, the court has remained almost completely passive in the face of the clearly expressed intention of the employer to refuse to comply with the valid court decision.

80. Accordingly, the applicant appears to have no prospect of having the judgment of 28 October 1998 enforced. This failure engages the responsibility of the Federation because its court failed to take sufficient steps to have the judgment enforced.

81. As the Chamber held in the above-mentioned *Jeličić* decision (see paragraph 74 above), a situation where the authorities take no action or take insufficient action to enforce a decision of the court deprives Article 6 paragraph 1 of all useful effect. Accordingly, there has been a violation of the applicant's right to a fair hearing within a reasonable time in the determination of her civil rights, as guaranteed by that provision.

2. Conclusion as to the merits

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

VIII. REMEDIES

83. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief, as well as provisional measures.

84. The applicant requests the Chamber to issue a decision ordering the immediate enforcement of the Court's decision and her reinstatement to work, along with re-establishment of all her rights arising from her labour relations.

85. The applicant requests compensation in the amount of 12,720.51 KM (the amount established by the court's expert findings and expert opinion, see paragraph 30 above) for pecuniary damages and 50,000.00 KM for non-pecuniary damages related to mental and physical suffering.

86. Regarding the applicants' compensation claim for pecuniary and non-pecuniary damages, the respondent Party considers that it is not responsible because the compensation claim relates exclusively to the employer. The respondent Party again asserts that the applicant, by her own will, refused to fill in and sign documents that resulted in the non-enforcement of the court decision. The respondent Party emphasises that, by its actions, it could not have caused pecuniary or non-pecuniary damages to the applicant because it has no responsibility or obligation to pay the amounts claimed by the applicant.

87. The Chamber has found that the respondent Party's failure to enforce the judgment of the Municipal Court I of 28 October 1998 involves a breach by the Federation of the applicant's rights as protected by Article 6 of the Convention. Therefore, the Chamber considers it appropriate to order the respondent Party to take all necessary steps to ensure full enforcement of the judgment without further delay, and in any case not later than 30 November 2003, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement.

88. Furthermore, the Chamber finds it appropriate to award the applicant pecuniary compensation for lost income. The applicant requested that the Federation be ordered to pay her compensation for lost salary, in the amount of 12,750.51 KM, covering the period from 24 December 1998 (when the judgment became valid) until 10 December 2001 (when the court financial expert gave his finding and expert opinion). The Federation objects to the claim as unjustified and ill-founded because it relates only to the employer. The Federation considers that, by its actions, it has not caused pecuniary damages to the applicant because it has no responsibility or obligation to pay the amounts claimed by the applicant.

89. The Chamber finds it appropriate, however, to award the applicant compensation for pecuniary damages. Although the employer, and not the respondent Party, has the obligation to pay the applicant compensation for lost salary, the Federation was obliged to coerce the employer to pay that compensation to the applicant. The Municipal Court I, in its procedural decision of 25 January 2000, ordered the employer to pay the applicant compensation for lost salary from the date the judgment became valid until her reinstatement to work. The court of the Federation, however, has taken insufficient action to enforce that procedural decision, even though, with regard to the payment of compensation, it had a very effective instrument to coerce the employer, *i.e.*, the power to block its bank account.

90. On 10 December 2001, the permanent court financial expert, upon the applicant's personal request, issued a finding and opinion that the total amount of the applicant's lost salary from 24 December 1998 (when the judgment became valid) until 10 December 2001 amounts to 12,720.51 KM. This figure amounts to approximately 350 KM for each month of unemployment. Although the expert's finding was issued at the applicant's request and not by the court, the Chamber considers it applicable, particularly because the expert reached his finding and opinion taking into account the average salary in the Federation. Having regard to this fact, the Chamber considers that the applicant's claim of approximately 350 KM for each month of unemployment is reasonable. From December 1998 until October 2003, the total amount of lost salaries is 19,950.00 KM. Therefore, the Chamber will award the applicant 19,950.00 KM in pecuniary compensation for lost salaries from January 1999, the first month the judgment became final and binding, through October 2003.

91. The Chamber will also order the Federation to pay to the competent Pension and Disability Fund all the contributions for the applicant's pension and disability insurance that have accrued from the date the judgment became valid until she is fully reinstated to her work.

92. Furthermore, in case the judgment is not enforced by 30 November 2003, the applicant shall also receive at the end of each month 350 KM until it is enforced and the applicant is fully reinstated to work.

93. Considering that the Federation failed to enforce a valid court judgment for more than 54 months after it was legally obliged to do so, the Chamber finds it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to obtain enforcement of the final and binding judgment in her favour. Accordingly, the Chamber will order the Federation to pay the applicant, within one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,000.00 Convertible Marks (*Konvertibilnih Maraka*) as compensation for non-pecuniary damages.

94. Additionally, the Chamber will award simple interest at an annual rate of 10%, beginning one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the sums awarded in the paragraphs 90, 92 and 93 or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

95. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as it relates to alleged violations of human rights under Article 6 paragraph 1 of the Convention;

2. unanimously, to declare the remainder of the application inadmissible;

3. unanimously, that the failure to enforce the 28 October 1998 judgement of the Municipal Court I in Sarajevo in the applicant's favour constitutes a violation of her right to a fair hearing within a reasonable time in the determination of her civil rights as protected by Article 6 paragraph 1 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Human Rights Agreement;

4. unanimously, to order the Federation of Bosnia and Herzegovina to ensure the full enforcement of the 28 October 1998 judgment of the Municipal Court I in Sarajevo in the applicant's proceedings against DD "Frizer" Sarajevo without further delay, and in any case not later than 30 November 2003, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement;

5. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 19,950.00 Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for lost salaries;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant at the end of each month 350.00 Convertible Marks *("Konvertibilnih Maraka"*) until the 28 October 1998 judgment of the Municipal Court I in Sarajevo is enforced and the applicant is fully reinstated to work; such sums shall be paid from the date stated in conclusion no. 4;

7. unanimously, to order the Federation to pay to the competent Pension and Disability Fund, not later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, all the contributions for the applicant's pension and disability insurance that have accrued from the date the judgment of 28 October 1998 became valid until the date of payment, and to pay the contributions for the pension and disability insurance for every month respectively, until she is fully reinstated to her work;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the date on which this decision becomes final and binding in accordance

with Rule 66 of the Chamber's Rules of Procedure, 1,000.00 Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum on the sums ordered in conclusions 5, 6 and 8, or any unpaid portion thereof, from the date of expiry of the above one-month period until the date of settlement in full; and

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or its successor institution no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel