



## **DECISION ON ADMISSIBILITY AND MERITS**

**Case no. CH/03/14431**

**“AVAZ” d.o.o. Sarajevo**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 9 July 2004 with the following members present:

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

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

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

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

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

## **I. INTRODUCTION**

1. The applicant is "AVAZ" d.o.o. (LLC), Publishing & Printing Corporation Sarajevo, located at Džemala Bijedića Street, no. 185 in Sarajevo. "AVAZ" is the owner and publisher of the daily newspaper "Dnevni avaz". The applicant complains that it was denied the right to the legal remedy of protection of legality before the Supreme Court due to procedural mistakes made exclusively by the respondent Party's bodies.

2. The case raises issues under Article 6 of the European Convention on Human Rights and Fundamental Freedoms ("the Convention").

## **II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION**

3. The application was submitted on 21 July 2003. The applicant requested the Chamber to issue a provisional measure prohibiting the enforcement of a 25 July 2002 procedural decision on enforcement until the completion of proceedings before the Chamber.

4. The request for the issuance of a provisional measure was rejected by the President of the Chamber on 30 July 2003.

5. The case was transmitted to the respondent Party on 11 September 2003 for its observations on the admissibility and merits under Article 6 of the Convention. The respondent Party submitted its observations on 12 November 2003.

6. The applicant replied on 10 December 2003.

7. On 12 December 2003, 5 February 2004, and 16 April 2004 the respondent Party sent additional information to the Chamber and Commission.

8. The Chamber deliberated on the admissibility and merits of the application on 5 September 2003. The Commission deliberated on the admissibility and merits of the case on 6 May 2004 and 9 July 2004. On the latter date it adopted the present decision.

## **III. FACTS**

9. On 11 April 2000 the Municipal Court I in Sarajevo, by its judgement, and by a 12 February 2002 procedural decision correcting the judgement, established that the defendant, Bosnia and Herzegovina political daily "Dnevni avaz" from Sarajevo, was obliged to pay 10,000 KM to the plaintiff A.M. and to compensate him for the expenses of the civil proceedings. The defendant was also obliged to publish this judgement completely at its own expense in its daily, "Dnevni avaz", within 15 days after the judgement became final and binding.

10. The Cantonal Court in Sarajevo refused the applicant's appeal and upheld the first instance judgement by its judgement of 29 May 2002.

11. On 19 July 2002 the applicant submitted an initiative to the Federal Prosecutor's Office to file a request for protection of legality against the judgements issued by the Municipal Court I and Cantonal Court.

12. In its initiative to raise a request for the protection of legality, the applicant complains that the court improperly established the newspaper as the defendant. A newspaper is registered in the media records at the Ministry of Education, Science, Culture, Sports and Information. Because newspapers are not registered in the court registry and are not legal persons, they cannot be a party to civil proceedings (substantial breach of Article 336 paragraph 2(10) of the Law on Civil

Procedure). The founders and publishers of newspapers are legal persons, however, and they can be parties to the proceedings. In this particular case, the News Publishing House "AVAZ", as a legal person, founded the newspaper "Dnevni avaz" and is the publisher of this newspaper. The applicant points out that the judgments issued are unenforceable because the newspaper has no property of its own that could be the subject matter of enforcement. Enforcement could be carried out against the News Publishing House "AVAZ" only, but it has not been designated as a defendant in the courts' judgements. The applicant also complains of incorrect application of the substantive law.

13. On 18 October 2002 the Federal Prosecutor, after an examination of the applicant's initiative, filed a request for the protection of legality before the Supreme Court of the Federation of Bosnia and Herzegovina through the Municipal Court I in Sarajevo.

14. On 20 May 2003 the Supreme Court of the Federation issued a procedural decision rejecting the request as out of time. The procedural decision states that

"[t]he request for protection of legality is an extraordinary remedy that the Federal Prosecutor may file within a three-month time limit, which in this case started to run on 18 July 2002, the day the defendant received the second instance judgement of the Cantonal Court in Sarajevo, and it expired on 18 October 2002.... On 18 October 2002, the last day of the stipulated time limit, instead of submitting his request to this court, which is the competent court, the Federal Prosecutor submitted his request to the first instance Municipal Court I in Sarajevo, a non competent court. On 10 February 2003, almost four months after the expiry of the time limit, the Municipal Court submitted it to this court. (In the meantime, the request for the protection of legality and the case file documents were also wrongly submitted to the Cantonal Court and in turn returned to the Municipal Court.) While deciding that the request was filed out of time, this court was also mindful of the provision of Article 102, paragraph 7 of the Law on Civil Proceedings, which exists to protect ignorant persons, and cannot be widely applied because it could also be misused. This court finds that, in these circumstances, especially when the prosecutor acts to obtain protection of legality within his authorisation, there is no possibility to apply this legal provision...."

15. On 23 July 2002 the plaintiff, A.M., as a creditor, requested the Municipal Court I Sarajevo to allow enforcement of the final and binding court judgement. On 25 July 2002 the Court allowed the proposed enforcement. On 13 September 2002 the applicant filed an objection against the procedural decision of 25 July 2002.

16. On 15 January 2004 the Municipal Court I in Sarajevo, in the enforcement proceedings, issued a procedural decision by which it decided on the applicant's objection. By its procedural decision, the court: (1) rejected the objection of "Dnevni avaz" as unlawful; (2) rejected the objection of the third person "AVAZ" Publishing & Printing Corporation as ill-founded; (3) accepted the proposition of the enforcement claimant (Mr. A.M.); and (4) ordered confiscation of "AVAZ" Publishing & Printing Corporation's monetary funds in its Raiffeisen BANK d.d. account in Sarajevo.

17. In the reasoning of the procedural decision, the Court stated that it established, following the presentation of evidence, that "Dnevni avaz", as a daily paper, lacked legal person status and, as such, could not be a party to the proceedings and that, according to the Law on Media, "AVAZ" d.o.o., as publisher of the daily paper, was obliged to settle the debt because a media publisher is responsible for damages incurred by false information published in the media. The Court invoked Article 30, paragraph 2 of the Law on Enforcement Proceedings which provides that enforcement shall also be ordered against a third person if the enforcement claimant proves, by a public document or a private document verified in accordance with the law, that this person took over the debt in a legal manner or that it is obliged by law to settle that debt. Should the third person's obligation to settle the debt be disputed, the parties must resolve the issue through the civil proceedings.

18. On 16 April 2004 the respondent Party informed the Commission that the applicant filed an appeal against the court's procedural decision of 15 January 2004 with the Cantonal Court in Sarajevo.

19. On 16 April 2004 the respondent Party also informed the Commission that the procedural decision of the Municipal Court in Sarajevo of 15 January 2004 has been enforced in its entirety. By that procedural decision, the Raiffeisen BANK d.d. in Sarajevo was ordered to carry out a transfer of monetary funds from the "AVAZ" d.o.o. account into the account of Mr. A.M., which was done on 4 February 2004.

#### IV. RELEVANT LEGAL PROVISIONS

20. The Code on Civil procedure (Official Gazette of FBiH, nos. 42/98 and 3/99) provides, in relevant part:

Article 37

...

"When deciding upon revision and requests for protection of legality, the courts operate in form of panels comprising five judges, except where the law provides otherwise".

...

Article 336

"A fundamental error in a legal procedure has occurred when the court failed to apply or wrongfully applied any provision of this law and it either affected or could have affected the issuance of a lawful and correct judgement.

"A fundamental error in the legal proceedings has occurred in the following cases:

1. where the composition of the court was contrary to regulations or where a judge who did not participate in the full hearing participated in the issuance of the judgement;
2. where a judge or lay judge who must be disqualified under the law, or who had been disqualified by a procedural decision of the court, participated in the issuance of the judgement;
3. where the court decided about a complaint in the dispute which is not within the court's competence;
4. where the court decided about a complaint which lies within the effective competence of another court or where it decided incorrectly, following an objection of a party, that it was competent, and the party complains thereof;
5. where, in contravention to the provisions of this law, the court based its judgement on inadmissible evidence presented by the parties;
6. where, in contravention to the provisions of this law, the court issued a judgement by default, a judgement based on a confession, or a judgement issued on the basis of a renouncement;
7. where any party was deprived of the possibility to participate in the hearing before the court by unlawful conduct, and especially due to failed service of documents;

8. where, in contravention of the provisions of this law, the court refused a request of the party to use his or her mother tongue and script and to follow the proceedings in his or her language, and the party complains thereof;

9. where the court issued a judgement without a full hearing where it was obliged to hold one;

10. where a person who may not be a party to the case appeared in the proceedings as a plaintiff or defendant, or if a party who is a legal person was not represented by an authorized person, or if a person who is incapable of participating was not represented by a legal representative, or if the representative did not have an authorization to participate in the dispute or to perform certain actions in the proceedings, and the authority to conduct certain actions was not subsequently approved;

11. where a claim was decided for which proceedings are already pending or were finally decided, or for which the plaintiff had withdrawn or reached a court settlement;

12. where, in contravention to the law, the public was excluded from the full hearing;

13. where the judgement contains deficiencies or irregularities, due to which it may not be examined, and in particular if the operative part of the judgement is hard to understand, if it is controversial in itself or it contravenes the reasoning of the judgement, or if the judgement does not have any reasoning or does not state reasons for decided facts or these reasons are controversial or hard to understand, or if there is a contradiction in respect of the decided facts between the statements in the reasoning of the judgement concerning the contents of documents or minutes in statements given in the course of the proceedings and the actual documents or minutes themselves."

...

#### Article 377

"If it determines that there has been a substantial violation of the provisions of the procedural rules described under article 336, paragraphs 1 and 2 of this law because of which a revision may be pronounced, except the violation set forth in paragraphs 2 and 3 of this article, the court of revision shall pass a decree on cancelling in whole or in a part the judgements of the courts of first and second instance, and return the case for retrial to the same or other Panel of the court of first and second instance, or to some other competent court.

"If, in the proceedings before the courts of first and second instance, a violation has been made which has been described under article 336, paragraph 2, points 3 and 11 of this law, except if it has been decided in a dispute already tried before another court, the court shall pass a decree on cancelling the decision and dismiss the appeal.

If, in the proceedings before the courts of first and second instance, a violation has been made which has been described under article 336, paragraph 2, point 10 of this law, the court of revision shall, considering the nature of the violation, act upon the provisions of paragraphs 1 and 2 of this article."

#### Article 378

"If the court of revision identifies an incorrect application of the substantive law, the judgement shall accept the revision and reverse the refuted judgement.

"If the court of revision finds that the incorrect application of the substantive law has led to the facts not being fully determined and because of that, there are no conditions for reversal

of the refuted judgements, it shall by its decree accept the revision, cancel in whole or in part the judgement of the courts of first and second instance, or only the judgement of the court of second instance, and return the case for retrial to the same or another Panel of the court of first or second instance."

...

#### Article 383

"The prosecutor in charge may raise a request for protection of legality against a final court decision within three months period if such revision is not prohibited.

"The Federal prosecutor may raise a request for protection of legality in cases described under article 3, paragraph 2 of this law, when the revision is allowed.

...

"The time limit for raising the request for protection of legality from article 1 of this law is measured as follows:

...

2. against a decision made in the second instance against which an appeal has not been filed, from the last day of the days on which the decision has been served to the parties."

...

#### Article 384

"The Supreme Court of the Federation of Bosnia and Herzegovina decides on the request for protection of legality filed by Federal Prosecutor."

...

#### Article 385

"A request for protection of legality may be raised in the following cases:

1. because of substantive violations of the procedural rules described under article 336, paragraphs 1 and 2 of this law, except where the court of first instance has passed the judgement without holding the main trial while it was due to hold the main trial, where the decision has been made on a dispute already in proceedings, or where the trial has not been held in public contradictory to the provisions of this law;
2. because of an erroneous application of the substantive law.

"A request for protection of legality may not be filed on the grounds of exceeding the claims or because of erroneous or incompletely determined facts."

#### Article 387

"If both a revision and the request for protection of legality have been raised against the same decision, the Supreme Court of the Federation decide on the legal remedies by passing a single decision."

#### Article 388

"The competent prosecutor shall be notified of the time of the session where the court shall consider the request for protection of legality."

## Article 389

"When deciding upon the request for protection of legality, the court shall restrict itself only to examination of the violations set forth by the prosecutor in charge in his request."

## Article 390

"Unless provided otherwise in this chapter, the court shall, in the proceeding on the request for protection of legality, apply the provisions of this law prescribed for revision."

21. The new Code on Civil Procedure, which entered into force on 5 November 2003 (OG FBiH no. 53/03), does not provide for the request for protection of legality as a legal remedy. This Code determines revision and renewal proceedings to be extraordinary legal remedies.

## V. COMPLAINTS

22. The applicant states that the Federal Prosecutor, having established that the initiative for the proceedings for protection of legality was justified, found that the judgements were unlawful, and then initiated proceedings before an incompetent court, a fact the applicant could not have influenced or changed. The applicant adds that the Municipal Court I in Sarajevo compounded the error by continuing the proceeding although it was not competent, because it submitted the request for protection of legality to the plaintiff's authorised representative, and it submitted the plaintiff's reply to that request to the defendant ("Dnevni avaz"). For these reasons the request came before the Supreme Court only on 10 February 2003, and that court issued a procedural decision rejecting the request for the protection of legality as out of time. This was, according to the applicant, exclusively the error of the court and the Public Prosecutor's Office, and not an error on the part of the applicant.

23. Based on these facts, the applicant complains of violations of Articles 6 and 13 of the Convention. The applicant requests non-pecuniary damages amounting to 3,000 KM. It also requests the Commission to order the Supreme Court to decide on the request for protection of legality.

## VI. SUBMISSIONS OF THE PARTIES

### A. The respondent Party

#### 1. As to admissibility

24. In its observations of 12 November 2003, the respondent Party refers to Article VIII(2)(a) of Annex 6, which stipulates that the Chamber (now the Commission) shall decide which applications to accept, taking into account the following criteria: whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application was filed with the Chamber within six months from such date on which the final decision was taken. The respondent Party is of the opinion that the applicant has not demonstrated that all effective remedies have been exhausted. The respondent Party points out that proceedings are pending before the Municipal Court I in Sarajevo for enforcement of the valid judgment, in which the applicant duly filed an objection against the 25 July 2002 procedural decision of the court. The respondent Party notes that the applicant has not demonstrated that these proceedings are ineffective remedies, and it concludes that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted effective remedies. The respondent Party therefore proposes that the application be declared inadmissible.

## **2. As to the merits**

25. As to the merits, the respondent Party believes that, with regard to the alleged violation of Article 6 of the Convention, the application should be declared manifestly ill-founded. The respondent Party asserts that Article 6 of the Convention was entirely complied with in the enforcement proceedings before the Municipal Court I in Sarajevo. With regard to compensation, the respondent Party argues that, because there is no violation, the compensation claim lacks merit.

### **B. The applicant**

26. The applicant, in its observations of 10 December 2003, stated that the enforcement proceeding was not a remedy that could have an impact on either the valid lower court judgment or the Supreme Court's procedural decision by which the request for protection of legality was rejected as out of time. The enforcement proceedings could only determine whether the valid judgment can be enforced or not.

27. The applicant concludes that the enforcement proceedings have not been an efficient legal remedy that could affect the circumstances surrounding the violations alleged in the application. As to the respondent Party's observations regarding Article 6 of the Convention and the reasonable time limit criterion, the applicant points out that the complaint in the application is related to the time limit of the request for protection of legality, which it was deprived of due to the failure of the court and the prosecutor's office. The applicant further points out that the respondent Party did not mention Article 13 of the Convention, which is referred to in the application, in its observations. The applicant further considers that the compensation claim is well-founded in relation to all the allegations and facts stated in the application and its additional observations.

## **VII. OPINION OF THE COMMISSION**

### **A. Admissibility**

28. Before considering the merits of the case the Commission 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 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 that the application has been filed with the Commission within six months from such date on which the final decision was taken...."

29. The Commission notes that the Constitutional Court of Bosnia and Herzegovina, in deciding case no. AP-125/02, took the following position:

"The legal remedies exhaustion rule requires that the appellant reaches a so-called final decision. A final decision represents a response to the last legal remedy used which is effective and adequate to examine a lower instance decision in both factual and legal aspects. Thereby, the legal remedy must depend on the appellant, regardless of whether it is an ordinary or an extraordinary legal remedy. A decision rejecting the legal remedy due to the lack of fulfilment of the formal requirements of the legal remedy by the appellant (time-limit, tax payment, form or fulfilment of other legal conditions) cannot be considered as a final decision. Such a remedy does not restart the running of the 60 days period referred to in Article 11, paragraph 3 of the Constitutional Court's Rules of Procedure (see Constitutional Court of Bosnia and Herzegovina, *U 15/0*, ruling of 4 and 5 May 2001).

"The request for the protection of legality, as the Constitutional Court stated in the paragraph 13 of this Ruling, cannot be considered as an effective and adequate legal remedy since it does not depend on the appellants but on the competent Public Attorney.

Therefore, the lodging of the request for the protection of the legality does not stop the running of the time-limit of 60 days provided for by Article 11, paragraph 3 of the Constitutional Court's Rules of Procedure save the situation that the Public Attorney decides to initiate proceedings for the protection of the legality. In the present case, the Public Attorney rejected the appellants' request" (the ruling of the Constitutional Court, no. AP 125/02 of 26 September 2003, paragraphs 13 and 15)."

30. In the circumstances, the Commission considers that the applicant exhausted all of the effective, adequate, and available legal remedies in its case before the domestic courts. Although it did so, it was not necessary for the applicant to seek to avail itself of the extraordinary remedy of protection of legality.

31. Nonetheless, the request for protection of legality, which in this case relates to the unlawfulness of the judgement found by the Federal Prosecutor, was a procedure made available to the applicant that could still affect the merits of the lower court decision. The Commission notes that the prosecutor's decision to approve or reject a request for the protection of legality is not a purely discretionary decision, but one governed by law; as a rule, the prosecutor approves the request if the legal requirements are met. The fact that the prosecutor approved and filed the applicant's request indicates that it met the legal standards. The gravamen of the applicant's complaint is that he was nonetheless deprived of this potential remedy by the incorrect procedural actions of the respondent Party's organs.

32. The Commission recalls, as set out above, that it shall also take into account whether the application was filed "within six months from such date on which the final decision was taken." Although it appears the respondent Party did not raise a specific objection to the application's admissibility under this rule, the Commission will nonetheless consider it *sua sponte*.

33. Having regard to the six-months rule in the circumstances of this case, the Commission considers that the time limit of "six months from the date on which the final decision was taken" runs from the date the Supreme Court of the Federation issued the procedural decision on the request for protection of legality, 20 May 2003. This decision, rather than the final decision on the merits of the case in the lower domestic courts, is the relevant final decision regarding the central issue raised in the application. The application was filed on 21 July 2003. The Commission therefore concludes that the application was submitted within six months from the date on which the final decision in this case was taken.

34. Finding no other grounds for inadmissibility, the Commission declares the application admissible.

## **B. Merits**

### **1. Article 6 of the Convention**

35. Article 6, paragraph 1 of the Convention provides, in relevant part, 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...."

36. The applicant complains that it has been deprived of its right to a legal remedy, the request for protection of legality, and that therefore there has been a violation of Articles 6 and 13 of the Convention.

37. In its observations, the respondent Party stated that an effective legal remedy was available to the applicant in the enforcement proceedings. The respondent Party did not address the issue of the failure to meet the time limit, although the applicant clearly pointed out that the subject matter of the application was the failure to meet the time limit by the respondent Party's

bodies. With regard to the enforcement proceedings, the applicant objected that in these proceedings the court would address only the issue of the enforcement of the valid court judgment and not the issue of whether the valid court judgment was in accordance with the law, which was the subject matter of the request for protection of legality.

38. The request for protection of legality is an extraordinary legal remedy that relates to the correct application of procedural and substantive law. As a rule, the filing of a request for protection of legality by a competent prosecutor implies a public interest in doing so. The request for protection of legality provides for the realization of a unified legal system in the territory of a judicial sovereignty (in this case the Federation of Bosnia and Herzegovina).

39. The Supreme Court of the Federation of Bosnia and Herzegovina decides on the Federal Prosecutor's request for protection of legality. In these proceedings, the Supreme Court may issue decisions that it also issues in the revision proceedings. Therefore, the Supreme Court may, if it finds that certain reasons exist as provided for in the law,

“cancel in whole or in a part the judgements of the courts of first and second instance, or only the judgement of the court of second instance, and return the case for retrial to the same or other Panel of the court of first and second instance, or to some other competent court.... If the court ... identifies an incorrect application of the material law, ... it shall reverse the refuted judgement.... If the court ... finds that the wrong application of the substantive law has led to the facts not being fully determined and because of that, there are no conditions for reversal of the refuted judgement, it shall ... cancel in whole or in part the judgement of the courts of first and second instance, or only the judgement of the court of second instance, and return the case for retrial to the same or another Panel of the court of first and second instance”.

(Articles 377 and 378 of the Code on Civil procedure).

40. In the present case, the Federal Prosecutor found that the legal requirements existed for instituting the request for the protection of legality, as set out by the applicant in its initiative. For this reason, the Prosecutor approved this legal remedy as well founded. By its decision, while deciding on the request, the Supreme Court might have affected the merits of the lower instance court's decision.

41. In its procedural decision, the Supreme Court of the Federation of Bosnia and Herzegovina concluded that the three-month time period for filing the request for the protection of legality started to run on 18 July 2002, the date the plaintiff was delivered the second instance judgment issued by the Cantonal Court in Sarajevo, and expired on 18 October 2002. This was the last day on which the request for the protection of legality could be submitted to the Supreme Court of the Federation of Bosnia and Herzegovina, as the competent court to decide on it. Failure to meet the time limit results in a loss of the right to file. On 18 October 2002, the last day of the time limit, instead of filing his request to the Supreme Court as the competent court, the Federal Prosecutor submitted it directly to the first instance Municipal Court I in Sarajevo, an incompetent court. On 10 February 2003, almost four months after the expiry of the time limit, that court forwarded it to the Supreme Court. In the meantime, the request for protection of legality and the case file had been erroneously sent to the Cantonal Court and then returned to the Municipal Court.

42. On 20 May 2003 the Supreme Court of the Federation of Bosnia and Herzegovina rejected the request for protection of legality as out of time without considering the merits of the request.

43. The Commission notes that the Federal Prosecutor established that the request for protection of legality was justified. Therefore, he approved the request for the protection of legality, which should have been submitted to the Supreme Court. Direct filing of a request for protection of legality to the Supreme Court is a long standing practice in the domestic legal system. Here, however, the Federal Prosecutor filed the request for protection of legality to the Municipal Court I. The Commission notes that this court was obliged to transmit the case to the competent court, but

both the Municipal and the Cantonal Court in Sarajevo failed to do so. The Commission further notes that the failure to meet the time limit to file the request for protection of legality was a procedural failure that can only be attributed to the respondent Party's bodies, i.e. the prosecutor's office and the courts.

44. The Commission finds that the applicant has been deprived of the legal remedy of protection of legality because the respondent Party's bodies did not comply with the preclusive time limits set out in the Code on Civil Procedure. In the circumstances, the Commission concludes that there has been a violation of the applicant's rights under Article 6 of the Convention.

## **2. Article 13 of the Convention**

45. The Commission finds that in light of its finding of a violation of the rights protected by Article 6 of the Convention, there is no need to examine the applicant's complaint of a violation of its right to an effective remedy under Article 13 of the Convention.

## **3. Conclusion on the merits**

46. The Commission concludes that the applicant's rights guaranteed by Article 6 of the Convention have been violated.

## **VIII. REMEDIES**

47. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Commission shall consider issuing orders to cease and desist, monetary relief, as well as provisional measures. The Commission is not necessarily bound by the claims of an applicant.

48. The applicant requests non-pecuniary damages amounting to 3,000 KM. Further, it requests the Commission to order the Supreme Court to decide on the request for protection of legality.

49. The Commission notes that it has found a violation of the applicant's right to access to court protected by Article 6 because the respondent Party deprived the applicant of access to the Supreme Court for consideration of a request for protection of legality. The Commission considers it appropriate to award monetary compensation to the applicant in recognition of the lost opportunity to avail itself of a remedy provided for by law. Accordingly, the Commission will order the respondent Party to pay the applicant the sum of 2,000 Convertible Marks (*Konvertibilnih Maraka*) within one month of the date of receipt of this decision.

50. The Commission will further order the respondent Party to pay the applicant simple interest at a rate of 10 (ten) percent per annum over the sum stated above, or any unpaid portion thereof, from the due date until the date of settlement in full.

51. The Commission will further order the respondent Party to report to it no later than 1 December 2004 on the steps taken by it to comply with the above orders.

## **IX. CONCLUSIONS**

52. For the above reasons, the Commission decides,

1. by 4 votes to 1, to declare the application admissible;

2. by 4 votes to 1, that there has been a violation of the applicant's rights under Article 6, paragraph 1 of the European Convention on Human Rights because the applicant was unjustifiably deprived of access to the Supreme Court for consideration of a request for protection of legality, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
3. by 4 votes to 1, to order the Federation of Bosnia and Herzegovina to pay the applicant, no later than one month from the date of receipt of this decision, 2,000 Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for the lost opportunity to avail itself of a remedy provided for by law;
4. by 4 votes to 1, to order the Federation of Bosnia and Herzegovina to pay the applicant simple interest at a rate of 10 (ten) percent per annum over the sum stated in conclusion no. 3 or any unpaid portion thereof from the due date until the date of settlement in full; and
5. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than 1 December 2004 on the steps taken by it to comply with the above orders.

(signed)  
J. David YEAGER  
Registrar of the Commission

(signed)  
Jakob MÖLLER  
President of the Commission