# DECISION ON ADMISSIBILITY AND MERITS

**(delivered on 7 September 2001)**

**Case nos.**
**CH/98/1309, CH/98/1312, CH/98/1314, CH/98/1318, CH/98/1319, CH/98/1321, CH/98/1322, CH/98/1323 and CH/98/1326**

**Almasa KAJTAZ, Dobrila BIJEDIĆ, Azira SIVČEVIĆ, Altijana MEŠIĆ, Rasema BEGIĆ, Elvedin DEVIĆ, Radenka CVIJETIĆ, Jasna ŠLJIVO, and Dženana ŠEHOVIĆ**

**against**

**BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 September 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice-President
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned applications 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 Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## I. INTRODUCTION

1. The applicants, who are of various ethnic origins, were employees in the Ministry of Justice and General Administration of the Republic of Bosnia and Herzegovina. In December 1997, a new Ministry for Civil Affairs and Communication (the "Ministry") was established and the applicants were not officially assigned to any post within this new Ministry.

2. The applicants allege that after the establishment of the Ministry, they continued working within the new Ministry, in the same positions until various dates in the beginning of 1999. On 8 September 1998, they learned that they had been relegated to the status of "unassigned" workers and that as a result they received lower salaries than other employees and stopped receiving benefits commencing on or around June 1998. They stopped receiving any compensation on 31 December 1998. They actually ceased working sometime between January and March 1999, respectively. They have never received procedural decisions terminating their working relations or relegating them to the status of unassigned workers.

3. In November 1998 the applicants, except for Dženana Šehović, initiated civil proceedings before the Municipal Court I in Sarajevo. The applicants requested compensation for lost salaries and other income due from their working relations. The applicants were allegedly unable to institute proceedings requesting reinstatement because they never received procedural decisions actually terminating their employment. To date, no decision has been issued in any of the applicants' cases.

4. The applicants complain that they have not received procedural decisions regulating their employment, that they were summarily dismissed from their jobs with the Ministry of Civil Affairs and Communication, and that the Law on State Administration was not complied with. The applicants also complain that they were discriminated against in their right to employment based on their national origin. Four of the applicants complain, specifically, that they have been discriminated against based on the fact that they are from mixed backgrounds.

5. These cases raise issues primarily under Article 6(1) of the European Convention of Human Rights (the "Convention") and Article II(2)(b) of Annex VI of the General Framework Agreement for Peace in Bosnia and Herzegovina in relation to Article 25(c) of the International Covenant on Civil and Political Rights (the "ICCPR").

## II. PROCEEDINGS BEFORE THE CHAMBER

6. The applications were submitted to the Chamber between 27 and 30 November 1998. On 9 July 1999 the First Panel considered the cases and decided to transmit them to the respondent Party. It also refused a request for provisional measures made by the applicants. The applicants had requested that the Chamber order Bosnia and Herzegovina as a provisional measure to take no further steps to terminate their employment.

7. On 13 July 1999 the cases were transmitted to the respondent Party for observations on their admissibility and merits. On 13 September 1999 the respondent Party wrote to the Chamber asking for an extension of the time limit to file their observations stating that they had not received information which they had requested from the Council of Ministers. The respondent Party's observations were received on 9 November 1999. Further observations and claims for compensation were received from most of the applicants between 28 December 1999 and 5 January 2000. Further replies were not received in two cases, CH/98/1314 Azira SIVČEVIĆ and CH/98/1318 Altijana MEŠIĆ.

8. The further observations of the applicants and claims for compensation were sent to the agents of the respondent Party on 10 January 2000 for observations. No further observations have been received.

9. The Chamber wrote to the respondent Party requesting further information on 17 October and 30 November 2000. Further information was received from the respondent Party on 1 December 2000.

10. At its session in December 2000, the Panel decided to hold a public hearing on the admissibility and merits of the case in January 2001.

11. On 10 January 2001 the Panel held a public hearing on the admissibility and merits of the applications in the Cantonal Court building in Sarajevo. Of the nine applicants Almasa Kajtaz, Dobrila Bijedić, Azira Sivčević, Altijana Mešić and Rasema Begić were present. Almasa Kajtaz represented all of the applicants, including the applicants who were not present at the hearing. Bosnia and Herzegovina was represented by two of its agents, Mr. Jusuf Halilagić and Mrs. Gordana Milovanović. Mr. Nudžeim Rečica, Deputy Minister for Civil Affairs and Communications appeared as a witness.

12. On 10 January 2001, the Chamber received further claims for compensation from Azira Sivčević (CH/98/1314) and Altijana Mešić (CH/98/1318). On 8 August 2001 the Chamber transmitted these claims to the respondent Party and requested any observations within 3 weeks. On 22 August 2001 the Chamber received a response from Bosnia and Herzegovina, which, however, did not comment on the compensation claims.

13. The Panel deliberated on the admissibility and merits of the applications on 11 January, 6 and 8 June, 2 and 3 July and 4 September 2001 and adopted the present decision on the latter date.

## III. FACTS

### A. General

14. In establishing the facts in the present case the Chamber will refer to the parties' submissions, the documents before it and its own findings from the testimony heard at the public hearing.

15. The central government of the Republic of Bosnia and Herzegovina was comprised of five ministries. These ministries were established by the Law on Ministries and Other Bodies of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina 3/96, 16/96 and 26/96 –hereinafter "OG RBiH"). The five ministries were**:** the Ministry of Finance, the Ministry of Foreign Affairs, the Ministry of Justice and General Administration, the Ministry for Refugees and Displaced Persons and the Ministry of Foreign Trade and International Communications.

16. The applicants were all permanently employed in the former Ministry of Justice and General Administration of RBiH. They were all employed at some time between May and September of 1996.

17. Pursuant to the Law on the Council of Ministers of Bosnia and Herzegovina and Ministries of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina "OG BiH" nos. 4/97 and 16/99), that entered into force on 24 December 1997, three ministries of BiH were established. They are as follows: the Ministry of Foreign Affairs, the Ministry of Civil Affairs and Communications, and the Ministry of Foreign Trade and Economic Relations. According to the respondent Party, part of the affairs of the former Ministry of Finance was taken over by the Ministry of Foreign Trade and Economic Relations and the Ministry of Civil Affairs and Communications. Affairs of the former Ministry of Justice and General Administration and the former Ministry for Refugees and Displaced Persons were taken over by the Ministry of Civil Affairs and Communications.

18. Pursuant to Article 49(1) and (3) of the Law on the Council of Ministers, Bosnia and Herzegovina had an obligation to enact, within 15 days from the date of entry into force of the Law, the Regulations on Internal Organisation of the Ministry, and to employ workers within 30 days from the day of adoption of the Regulations. Article 51 of the Law on the Council of Ministers obliged Bosnia and Herzegovina within 30 days after the entry into force of this Law to decide in which manner the existing administrative bodies would be continued, modified or dissolved.

19. The Rules on Internal Organisation of the Ministry of Civil Affairs and Communication of Bosnia and Herzegovina were adopted on 26 March 1998. Pursuant to Article 31 of these Rules, 93 persons were to be employed with the Ministry of Civil Affairs and Communication. Pursuant to Article 4, seven internal divisions were established within the Ministry. Pursuant to Article 32, legal regulations are to be issued whereby the working positions in the Ministry shall be defined. Pursuant to Article 33, the Minister in agreement with the Deputy Ministers was to carry out the admission and disposition of the Ministry's employees to perform tasks and assignments, within 30 days from the date of issuance of the Rules of Procedure.

20. Unofficially, the applicants learned that on 8 July 1998 the Council of Ministers had passed a decision concerning the material rights of employees of the Council of Ministers with effect from 1 May 1998. Based on this decision the salaries and other material rights of the employees who were to be employed by the new Council of Ministers were established. According to the applicants, persons received decisions employing them based on this 8 July decision at different points in time depending on their national origin. Persons of Croat origin received decisions employing them in the Ministries in August 1998 and Bosniaks in October 1998. The applicants are unaware whether persons of Serb origin ever received a decision. None of the applicants ever received such a decision formally employing them with the new Ministry.

21. Nonetheless, the applicants continued working with the new Ministry performing the same duties at the same salary until 8 September 1998. On 8 September 1998, the applicants learned from the cashier, for the first time, that there were two lists for salaries, one for "appointed" employees and the other for "non-appointed" employees. All of the applicants were on the list of "non-appointed" employees. Persons on this list received reduced salaries, no remuneration for meals or transport, or vacation bonuses. However, the applicants to this day have not been served with any procedural decision changing their status or position.

22. After 8 September 1998, the applicants, while receiving less salary and no remuneration for meals and transport, or vacation bonus, continued working in the same positions until various times in 1999. The applicants stopped receiving any payment at all on 31 December 1998. According to the applicants, and the respondent Party has not contested, the refusal of the Ministry to issue a procedural decision on their labour relations prevented them from seeking protection of their rights through administrative or court procedures.

23. According to a number of applicants, on 11 September 1998 a meeting was held wherein they learned about a Decision on Reimbursement of Employees of Former State Organs of the Republic and Organs of State Administration of the Council of Ministers. The decision concerns employees who have not concluded their labour relations with the new Ministry. This decision states as follows:

> "This decision shall establish the right to reimbursement of employees of the former state organs of the Republic and organs of State administration which were engaged in tasks from the jurisdiction of institutions of Bosnia and Herzegovina as users of the Budget of Bosnia and Herzegovina for 1998 (Official Gazette of BiH No. 7/98) of 1 June 1998.
>
> Employees referred to in paragraph I of this decision who have not concluded labour relations in Institutions of Bosnia and Herzegovina shall have the right to reimbursement in the amount of their salary from May 1998 to the date of concluding their labour relations, and at the latest 31 December 1998.
>
> Reimbursement as referred to in paragraph II of this decision shall be paid by the Ministry of Civil Affairs and Communications out of means provided for that purpose in the Budget of Bosnia and Herzegovina for 1998.
>
> Institutions of Bosnia and Herzegovina for which the employees referred to in paragraph I of this decision were working shall be obliged to submit the list of above mentioned employees to the Ministry of Civil Affairs and Communications before 20 September 1998."

This decision was never dated or signed. It appears that none of the applicants were officially given a written copy of this decision.

24. Six of the applicants wrote to the Deputy Ministers inquiring about their labour status on 10 November 1998. These applicants received letters in response from Deputy Minister Milan Križanović on 11 November 1998 and from Deputy Minister Nudžeim Rečica on 17 November 1998.

25. In his letter of 11 November 1998, Deputy Minister Križanović stated that he was "surprised that you as long term employees in the State Administration could not foresee it," as it was known that there would be a reorganisation. Further, he pointed out the need to achieve a national balance as required by law. He further pointed out that the applicants had never been employees of the Ministry for Civil Affairs and Communications, because only people who received procedural decisions on assignment to a post signed by the Minister and his two Deputies were actually employed by the Ministry. Additionally, he stated that the "key date" was 1 June 1998, and that from that date on employees of the former State Ministries have the right to reimbursement until the end of 1998. Finally, he told them that on the basis of what was stated above, those persons who did not receive procedural decisions assigning them to a post have no obligation and no right to continue coming to work.

26. In his letter of 17 November 1998 Deputy Minister Rečica responded to the applicants letter and explained, somewhat, the new structure of the Ministry. He stated that based on the Rules of Internal Organisation of the Ministry of Civil Affairs and Communications persons were employed and commenced their working relations on 1 June 1998. Further, he stated that according to the Rules the total number of employees is 93. Of the total number one-third, or 31 employees, are from the Republika Srpska, and two-thirds, or 62, from the Federation. Additionally, in accordance with the constitutional competencies of the institutions of Bosnia and Herzegovina a smaller number of tasks were taken over from the Ministry of Justice and General Administration, and these tasks are implementation of international and inter-entity criminal law and tasks concerning citizenship.

27. He went on to explain that the total number of employees in the Sector for international and inter-entity criminal law is six and of this number three are Bosniaks, two are Serbs and one is a Croat, "as established by the Rules of Internal Organisation." The total number of employees in the Sector for Citizenship and Immigration and Asylum is ten and of this number four are Bosniaks, three are Serbs, two are Croats and one belongs to the category of "Others". Of all of the employees of the former Ministry of Justice and General Administration, eighteen employees were not employed in the Ministry of Civil Affairs and Communications and of this number 11 are Bosniak, 5 Serbs and 2 Croats.

28. Further, in his opinion, the Law on the Council of Ministers did not contain provisions on the rights of former employees of organs of the former Republic. The only provision relating to this issue was Article 51 (see paragraph 18 above). On the basis of Article 51 the Council of Ministers at its 59$^{th}$ session of 10 September 1998 had issued a Decision on Remuneration for Employees of Former State Organs and Organs of the State Administration. By this decision, persons who did not establish working relations in the institutions of Bosnia and Herzegovina had the right to remuneration up to and no later than 31 December 1998. By this decision he states that the Council of Minsters "practically" decided on the status of employees of the former State organs.

29. Finally, he stated that if the number of Ministries was expanded, "former Ministry of Justice and General Administration of Bosnia and Herzegovina employees who did not start their working relations in new institutions of Bosnia and Herzegovina should have priority for employment in these Ministries."

30. During November and December 1998, the applicants, except for Dženana Šehović, initiated civil proceedings before the Municipal Court I in Sarajevo. The applicants requested compensation for lost salaries and other income due from their working relations. The applicants were allegedly unable to institute proceedings regarding the status of their labour relations because they had never received procedural decisions actually terminating their employment. The applicants were also deprived of the

ability to apply to the Labour Inspector because he too was "unassigned" and there was no Labour Inspector on the State level.

31. A new Law on the Council of Ministers of Bosnia and Herzegovina and Ministries of Bosnia and Herzegovina was adopted on 14 April 2000 and entered into force in November 2000 (OG BiH 11/00)(the "New Law"). Pursuant to Article 38 of the New Law the following additional three Ministries were established: the Ministry of Human Rights and Refugees; the Ministry of BiH Institutions Treasury and the Ministry for European Integration.

32. The applicants allege that during January 1999 they were told that their employment rights had ceased as of 31 December 1998. They further allege that they were clearly told that none of them would receive a procedural decision on termination of their employment.

## B. The facts of the individual applications

### 1. Almasa KAJTAZ - CH/98/1309

33. On 1 June 1996 the applicant, who is of Bosniak origin, was employed as a permanent employee with the former Ministry of Justice and General Administration. She was employed as an Associate Administrator in Second Instance Administrative Proceedings, Department for Citizenship, Travel Documents, Foreigners, and Border Crossings. The applicant worked in the Presidency building, located at Musala 9 in Sarajevo.

34. Specifically, the applicant was responsible for: 1) drafting procedural decisions granting and withdrawing BiH citizenship; 2) handling permissions for the extension of travel documents to the citizens of BiH abroad; 3) dealing with issuance of visas to foreigners who are coming from countries which come under the visa regime; and 4) dealing with the refugee status of persons who escaped from Sandžak and Kosovo.

35. The applicant then learned on 8 September 1998 of the two lists referred to in paragraph 21 above. From that point on, the applicant began receiving less salary than "appointed" employees. The applicant also stopped receiving all other benefits. The applicant did not receive any compensation for September and October 1998. The applicant stopped receiving any compensation or benefits as of 31 December 1998. The applicant never received a procedural decision formally terminating her employment.

36. On 11 November 1998 the applicant instituted legal proceedings before the Municipal Court I in Sarajevo. The applicant requested compensation for lost salary and other income due from her working relations. To date, no decision has been taken in the applicant's case.

37. The applicant continued working in the same position until 25 March 1999. On that day the applicant alleges that Deputy Minister Nudžeim Rečica orally ordered the guards not to allow the applicant and her colleagues, who had also filed complaints with the Municipal Court I, to enter the building. As of that day, the applicant alleges that the room she worked in has been locked and that a few hundred cases she had been working on lay strewn all over the floor.

38. The applicant informed the Minister Marko Ašanin in April 1999 and again, in writing on 7 May 1999, of the fact that she and other employees were forbidden from entering the Presidency building. The applicant also informed the Council of Ministers of BiH of the ongoing situation in the Ministry. No reply was ever received.

39. The applicant alleges in her further reply to the respondent Party's observations, and the respondent Party has not denied, that Mr. Bakir Dautbašić, who is of the same ethnic origin as the applicant, is now performing the duties that the applicant had performed. The applicant alleges that Mr. Dautbašić has lesser qualifications than she and no experience. The applicant argues that this fact establishes that her treatment was not simply a matter of achieving a national balance, as the person who replaced her was of the same national origin. Rather, she argues, it was simply a matter of arbitrary and unlawful conduct.

40. In further support of her argument that the Ministry acted arbitrarily, the applicant states that Mrs. Amela Bašić, who is of Bosniak origin, was immediately rehired by the Ministry after she withdrew her application from the Chamber.

41. The applicant requests the Chamber to order the respondent Party to issue a procedural decision concerning her labour status and to pay her both pecuniary and non-pecuniary compensation.

### 2. Dobrila BIJEDIĆ - CH/98/1312

42. On 1 June 1996 the applicant, who is of mixed ethnic origin and in a mixed marriage, was employed as a permanent employee with the former Ministry of Justice and General Administration. She was employed as an Associate Administrator in Second Instance Administrative Proceedings, Department for Citizenship, Travel Documents, Foreigners, and Border Crossing. The applicant was employed as a Croat, although in 1990 she declared herself as a "Bosnian Catholic". The applicant alleges that she was told by a Minister, Mr. Križanović, that she would not be employed as a Croat since she did not declare herself as such. He further told her to speak with Mr. Rečica, the Bosniak Deputy Minister, about assigning her to a post. She alleges that Mr. Rečica would not meet with her.

43. Specifically, the applicant's responsibilities and duties were the same as Ms. Kajtaz's.

44. In May 1998 the applicant started receiving a lower salary than others and no benefits. The applicant then learned on 8 September 1998 of the two lists referred to in paragraph 19 above. The applicant did not receive any compensation for September and October 1998. The applicant stopped receiving any compensation or benefits at all as of 31 December 1998. The applicant never received a procedural decision formally terminating her employment.

45. On 13 November 1998 the applicant brought a lawsuit before the Municipal Court I in Sarajevo. The applicant requested compensation for lost salary and other income due from her working relations. The applicant alleges that the respondent Party failed to appear at any of the scheduled court hearings. Accordingly, each hearing has been postponed. To date, no decision has been taken in the applicant's case.

46. The applicant continued working in her position, nonetheless, until 25 March 1999. On that day the applicant alleges that Deputy Minister Nudžeim Rečica orally ordered the guards not to allow the applicant, and her colleagues, who had also filed complaints with the Municipal Court I, to enter the building. The applicant alleges that this action was taken in retaliation for the applicant having provided evidence to the Municipal Court I. As of that day, the applicant alleges that the room she worked in has been locked and that a few hundred cases she was working on lay strewn all over the floor. The applicant further alleges that she has been denied access to any materials in her former office.

47. The applicant alleges, and the respondent Party does not deny, that the Ministry appointed a person of Croat origin to fill her place. This person allegedly had previously worked for the former Ministry of Refugees and Displaced Persons. According to the applicant this person has no prior experience with citizenship issues.

48. The applicant requests the Chamber to order the respondent Party to issue a procedural decision concerning her labour status and to pay her both pecuniary and non-pecuniary compensation.

### 3. Azira SIVČEVIĆ - CH/98/1314

49. On 7 August 1996 the applicant, who appears to be of Bosniak origin, was employed as a permanent employee with the former ministry. She was employed in the position of file manager with the Ministry of Justice and General Administration, Department for Citizenship, Travel Documents, Foreigners, and State Borders. Specifically, the applicant was responsible for registering procedural decisions issued by the Ministry, consents for the issuance of travel documents, retrospective registration of births, and archives.

50. Commencing in August 1998, the applicant began receiving a lesser salary as a non-appointed employee and no benefits. The applicant stopped receiving any salary at all as of 31 December 1998. However, the applicant continued working at the same job until 1 March 1999. The applicant's employment record was concluded on 31 December 1998.

51. The applicant filed a lawsuit with the Municipal Court I in Sarajevo on 13 November 1998. The case is still pending.

52. The applicant alleges, and the respondent Party has not contested, that she was replaced by her colleague Mira Radić, presumably of Serb origin.

53. The applicant alleges that she was humiliated when she complained about the situation and one of her colleagues told her that "she should be happy that her employment record was concluded at all."

54. On 1 March 1999 the applicant found other employment. However, her previous year of employment is not connected so that there is a gap in her employment record from 1 January 1999 through 1 March 1999.

### 4. Altijana MEŠIĆ - CH/98/1318

55. On 28 November 1996 the applicant, who appears to be of Bosniak origin, was hired as a permanent employee with the former ministry. She was employed in the position of a data processor with the Ministry of Justice and General Administration Department for Citizenship, Travel Documents, Foreigners, and State Borders.

56. Commencing in September 1998, the applicant began receiving a lesser salary as a non-appointed employee and no benefits. The applicant stopped receiving any salary as of 31 December 1998. However, the applicant continued working in the same position until 15 February 1999. The applicant's employment record was concluded on 31 December 1998.

57. The applicant filed a lawsuit with the Municipal Court I in Sarajevo on 13 November 1998. The case is still pending.

58. The applicant found other employment on 15 February 1999. The applicant alleges that she was told by a colleague, who was employed by the new Ministry that she should be happy that her employment record was concluded at all because many persons' records have not been concluded. The applicant further alleges that the Ministry has denied the applicant access to any of her documents that could be used as evidence in this case or the case before the domestic court. The applicant finally alleges that any employee who would provide her with such documents would lose their jobs.

59. The applicant requests both pecuniary and non-pecuniary compensation.

### 5. Rasema BEGIĆ – CH/98/1319

60. On 1 June 1996 the applicant, who is of Bosniak origin, was employed as a permanent employee with the former Ministry of Justice and General Administration. The applicant was employed

as the officer in charge of documentation and electronic data processing, Department for Citizenship, Travel documents, Foreigners and State Borders.

61. Commencing in June 1998, the applicant began receiving a reduced salary as a non-appointed employee and no benefits. The applicant stopped receiving any salary at all as of 31 December 1998. However, the applicant continued working at the same job until 31 March 1999. The applicant's employment record has not been concluded.

62. The applicant filed a lawsuit with the Municipal Court I in Sarajevo on 17 November 1998. The case is still pending.

63. The applicant alleges, and the respondent Party has not contested, that the position that she occupied has not been abolished. However, someone else has been employed. Further, the applicant alleges that after 1 September 2000, two extra persons, of Bosniak origin, were employed to perform the same duties that the applicant had been performing.

64. The applicant requests the Chamber to order the respondent Party to issue a procedural decision concerning her labour status, to return the applicant to her previous post, and to pay her both pecuniary and non-pecuniary compensation.

### 6. Elvedin DEVIĆ – CH/98/1321

65. On 10 September 1996 the applicant, who is of Bosniak origin, was employed as a permanent employee with the former Ministry of Justice and General Administration. The applicant was employed as a courier in the Department for General and Mutual Affairs.

66. Commencing in June 1998, the applicant began receiving a lesser salary as a non-appointed employee and no benefits. The applicant stopped receiving any salary as of 31 December 1998. However, the applicant continued working at the same job until approximately March 1999.

67. According to the applicant the decision on Reimbursement of Employees of Former State Organs of the Council of Ministers was read at an 11 September 1998 meeting. That decision stated that certain employees "shall have the right to reimbursement" in the amount of their salaries from May 1998 until at the latest 31 December 1998. The applicant also learned at that meeting that essentially his employment could be terminated without any notice on 31 December 1998.

68. The applicant filed a lawsuit with the Municipal Court I in Sarajevo on 11 November 1998. According to the Chamber's information, the applicant's case has not been decided.

69. During the public hearing the Chamber was informed that the applicant had been employed by the Ministry for Civil Affairs and Communication on 10 September 2000.

70. The applicant maintains his claim for compensation.

### 7. Radenka CVIJETIĆ – CH/98/1322

71. On 1 June 1996 the applicant, who is of Serb origin living in the Federation, was employed as a permanent employee with the former Ministry of Justice and General Administration, Department for General and Mutual Affairs. The Applicant was employed in the position of officer for personnel and general affairs.

72. The applicant's job responsibilities included: registration and checking out of employees, making procedural decisions on employment or suspension of employment, making procedural decision on salaries, making procedural decisions on annual leave, closing employment books.

73. On 8 September 1998 the applicant received her June and August reduced salary as a "non-appointed" employee and no benefits.

74. The applicant filed a lawsuit with the Municipal Court I in Sarajevo on 11 November 1998. The case is still pending.

75. The applicant alleges that she has been discriminated against because she 1) is of Serb origin and resides in the Federation; and 2) because of the national balance of the employees within the new Ministry 1/3 of the positions are for Serbs from the Republika Srpska, 1/3 for Bosniaks and 1/3 for Croats from the Federation. As the applicant is of Serb origin living in the Federation she has been discriminated against.

76. By letter dated 31 October 2000 the applicant informed the Chamber that, by a procedural decision of the Ministry of Civil Affairs and Communications (no. 01/1-823/00) of 5 October 2000, she was assigned to the post of officer for register with the Sector for International and Inter-Entity Criminal Law.

77. The applicant informed the Chamber that she maintains her claim for compensation and to have her seniority recognised. The applicant also complains of the fact that she was recruited as a Bosniak, probably because she lives in the Federation.

### 8. Jasna ŠLJIVO – CH/98/1323

78. On 1 May 1996 the applicant, who is of mixed ethnic origin, was employed as a permanent employee with the former Ministry of Justice and General Administration. The applicant was employed in the office for copying.

79. On 8 September 1998 the applicant received her June-August salary in a reduced amount as a "non-appointed" employee and no benefits. She was told by the cashier on that date that there were two lists for assigned and unassigned employees. From that date onwards she received a reduced salary and no reimbursements. The applicant received no salary for September and October 1998.

80. According to the applicant, the decision on Reimbursement of Employees of Former State Organs of the Council of Ministers was read at an 11 September 1998 meeting. That decision stated that certain employees "shall have the right to reimbursement" in the amount of their salaries from May 1998 until at the latest 31 December 1998. The applicant also learned at that meeting that essentially her employment could be terminated without any notice on 31 December 1998. The applicant points out that that decision was never signed.

81. The applicant alleges that on several occasions she attempted to speak with Deputy Minister Križanović, but he would not receive her. On 10 and 16 November 1998 she and the other applicants sent letters to Deputy Ministers inquiring about their status. On 17 November 1998 the applicant received a response.

82. The applicant alleges that on 8 July 1998 the Council of Ministers issued a decision regarding the status of employed people and their labour rights. That decision is signed.

83. On 12 November 1998 the applicant initiated a lawsuit with the Municipal Court I in Sarajevo. To the Chamber's knowledge this lawsuit is still pending.

84. The applicant continued working until 1 February 1999. The applicant alleges that on that date her immediate supervisor literally threw her out of the office.

85. The applicant alleges that she has been discriminated against because she is from a mixed family. She alleges that her immediate supervisor told her that he could not help her because she was from a mixed family and that he was Bosniak and would help only Bosniaks. In March 1998 everyone had to write biographies and one of the questions asked was about their respective nationalities. The applicant declared herself a Croat. The applicant further alleges that her post was filled by a person of Bosniak origin who has less experience than she.

86. On 1 August 1999 the applicant gained other employment. However, she has not been registered as an employee because her employment record has not been concluded and, therefore, she cannot be registered with her new employer.

87. The applicant requests the Chamber to order the respondent Party to issue a procedural decision concerning her labour status and to pay her both pecuniary and non-pecuniary compensation.

### 9. Dženana ŠEHOVIĆ – CH/98/1326

88. On 26 August 1996 the applicant, who is of Bosniak origin, was employed as a permanent employee with the former Ministry of Justice and General Administration. The applicant was employed in the position of an administrator in the sector for application of international and inter-entity politics and criminal regulations.

89. On 8 September 1998, the applicant learned that she had been placed on the "non-appointed" employee list. As a result, commencing in June of 1998 she received less salary than others and no benefits. She stopped receiving any remuneration as of 31 December 1998.

90. According to the applicant, the decision on Reimbursement of Employees of Former State Organs of the Council of Ministers was read at an 11 September 1998 meeting. In that decision it was stated that certain employees "shall have the right to reimbursement" in the amount of their salaries from May 1998 until the latest 31 December 1998. The applicant also learned at that meeting that essentially her employment could be terminated without any notice on 31 December 1998. The applicant points out that that decision was never signed.

91. On 5 October 1998 some persons who were employed by the Ministry received proper decisions on employment. According to the applicant, those decisions were retroactive to 1 June 1998. However, a copy of the decision in the case file states that the decision is retroactive to 1 May 1998.

92. On 5 November 1998 the applicant sent a written request to Mr. Rečica regarding the status of her labour rights. On 17 November 1998 the applicant received a letter from Deputy Minister Rečica. In that letter Mr. Rečica stated that the total number of employees in the Sector for International and Inter-Entity Criminal Law is six employees of which three are Bosniaks, two Serbs and one Croat. An employee who meets the requirements prescribed by the Rules of Internal Organisation of the Ministry of Civil Affairs and Communications was appointed to the position of administrator for data processing and verification abroad. Mr. Rečica also informed the applicant that seventeen employees, besides the applicant, were not employed from the former Ministry of Justice and General Administration, of which ten were of Bosniak origin. He further informed the applicant about the 10 September 1998 decision regarding compensation for unassigned employees. Finally, he stated that if the number of employees in the Council of Ministers increased she would priority in employment in those ministries.

93. The applicant was informed that her exact position still exists in the new ministry, that the number of employees was not reduced in her specific case, but that her job was given to someone else. The person who replaced her was also of Bosniak origin. The applicant alleges that that person is not qualified for the position.

94. On 10 May 1999 the applicant informed the Chamber that she had started working on 1 March 1999 for another employer. In order to gain full working rights with her new employer the applicant needs to conclude her working book as of 28 February 1999. However, she was refused and they agreed to conclude her book as of 31 December 1998. Nonetheless, it appears that her book was never concluded.

95. On 1 October 2000 the applicant was re-employed by the Ministry of Civil Affairs and Communication. The applicant maintains her claims for pecuniary and non-pecuniary compensation.

## C. Oral evidence received at the public hearing

96. Mr. Rečica, the Deputy Minister for Civil Affairs and Communications, appeared as a witness and gave testimony regarding the appointment of employees for the Ministry. He stated that the competencies of the Council of Ministers, in comparison with the previous Government, were considerably reduced. Therefore, the Ministry could not take over all of the employees of the former ministries. He further stated that employment had to be done in accordance with the principle of "equal representation" as set forth in the Law of the Council of Ministers.

97. Until the issuance of the Rules on Internal Organization, which came into force in March 1998, the former ministries continued formally and all employees were coming to work. They worked and received salaries for their work within the same scope and capacity as they did in 1996. According to Mr. Rečica, "this means a continuity was created." However, he did not think that there was legal continuity, therefore, creating a "legal vacuum" with respect to the regulation of the status of employees who lost their jobs. Mr. Rečica stated that the Law on the Council of Ministers does not recognize the continuity of the former institutions. In view of that, he stated that the Ministry did not have the competence to terminate the employment of persons they did not employ in the first place.

98. Within the structure of the former Ministries, approximately 80% of the employees were Bosniaks. Within the Ministry of Civil Affairs and Communications there was the department of citizenship which was planned to have eight employees and the department of international and inter-entity criminal law which was meant to have six or seven employees. This means that the two departments could employ only fifteen persons in total, and the national balance had to be taken into account. Persons who were formally employed with the new Ministry of Civil Affairs and Communication received procedural decisions appointing them.

99. With respect to "equal representation" he stated that the Ministry employed 40% Bosniaks, 23% Croats from the Federation and 33% of Serbs from Republika Srpska. Some persons were employed without their ethnic origin being taken into account. The exact manner in which this was implemented was not explained. Generally, he stated that this notion of "equal representation" was implemented through "a political balance, political agreement, assessment as to what was important and what was less important." He further stated that the issue of persons who did not fit neatly into one of the three categories was never resolved by the Council of Ministers formally, but that they tried to take care of such persons.

## IV. RELEVANT LEGISLATION

### 1. Constitution of Bosnia and Herzegovina

100. The Constitution of Bosnia and Herzegovina is contained in Annex 4 to the General Framework Agreement. Article I of the Constitution is entitled "Continuation". Article 1 reads in relevant part:

> "The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina", shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognised borders..."

101. Annex 2 of the Constitution of Bosnia and Herzegovina is entitled "Transitional Arrangements". Annex 2 Article II is entitled "Continuation of Laws" and reads as follows:

> "All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina."

102. Annex 2 Article IV reads as follows:

> "Administrative functions, institutions and other bodies in Bosnia and Herzegovina shall function in accordance to applicable agreements or laws."

### 2. Laws in Force Bosnia and Herzegovina

#### (a) The Law on State Administration

103. The Law on State Administration (Official Gazette of the Republic of Bosnia and Herzegovina no. 26/93 - hereinafter "OG R BiH") was taken over as the law of Bosnia and Herzegovina pursuant to Annex 2 Article II of the Constitution of Bosnia and Herzegovina. It establishes a detailed regime for regulating, among other things, the working relations of employees in the State Administration.

104. Articles 323 through 327 deal with the rights of employees in case of the reduced scope of activities. According to Article 323 of this law, employees whose positions become unnecessary due to reduction in workload shall be appointed to other duties and activities in accordance to his/her education, within the same or another organ of the same social-political community. In case an employee cannot be appointed to duties and activities in such manner he/she shall remain unassigned for no longer than 6 months.

105. Article 325 provides that an unassigned worker, if not assigned within 6 months from the day he/she became unassigned, shall terminate working relations with the administrative organ. The 6-month notice period shall run from the date of receipt of a procedural decision establishing that a worker is unassigned.

106. Article 326 provides that an unassigned worker is entitled to an increase of salary, as well as other remuneration, in the same manner as other administrative workers working at that administrative organ.

107. Articles 328 deals with workers' rights in case of the termination of administrative organs. Article 328 provides that an administrative organ taking over the activities of the terminated administrative organ shall take over workers employed with that organ on the day that the administrative organ is terminated. The taking over of employees shall be performed automatically with the taking over of related activities. Workers of a terminated administrative organ that are not assigned within the administrative organ taking over, shall be provided with the rights encompassed in the Law on rights of workers in case of reduced scope of activities within administrative organs.

108. Articles 332 through 335 deal with the rights and liabilities of workers. Article 333 provides, in relevant part, that an employee who considers that his/her rights have been violated by a procedural decision adopted by the official managing administrative organ may submit an objection to that organ. An objection shall be submitted within 15 days from the day of receipt of the procedural decision. Article 335 provides that such workers shall be entitled to seek protection from the regular courts against procedural decisions negatively impacting on their working relations issued by the official managing administrative organ.

#### (b) Instruction on Employment Record Card

109. The Instruction on Employment Record Card (Official Gazette of the Socialist Republic of Bosnia and Herzegovina 41/90 - hereinafter "OG SR BiH") as amended by the Instruction on Amendments to the Instruction on Employment Record Card (OG R BiH 14/93) provides, among other things, a detailed procedure for the issuance of employment record cards, annulment and issuance of new employment record cards. Article 18 provides that that a company or other legal person is obligated to return the Employment Record Card to the worker, correctly filled in, within 5 days of cessation of his/her working relation. The date of cessation of work shall be entered as the date determined in the decision (if the decision is final- the date determined in the final decision, or if the decision is legal- the date determined in the valid decision, in accordance with the general act and the law).

#### (c) Law on Republic Ministries and Other Organs of Republic Administration

110. The Law on the Ministries of the Republic of Bosnia and Herzegovina (OG RBiH 3/96, 16/96 and 26/96) established and regulated the functions of the Ministries of the Republic of Bosnia and Herzegovina. The law came into force on 27 January 1996.

111. On the basis of Article 3, the Republic Ministries of the then RBiH were established. Article 3 established the Ministry of Justice and General Administration as one of the Republic Ministries that was the successor of the former Ministry of Justice. It was responsible for the following:

> "The Ministry of Justice and General Administration performs administrative, professional and other activities from the competence of Bosnia and Herzegovina, relating to the preparation, suggestion, determination and execution of laws, other regulations and acts in the fields related to Republic citizenship, passports, immigration, asylum, implementation of international and inter-entity policies and regulation of criminal procedures."

**(d) Law on the Council of Ministers of Bosnia and Herzegovina**

112. The Law on the Council of Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina 4/97 – hereinafter "OG BiH") regulates the organisation and responsibilities of the Council of Ministers of Bosnia and Herzegovina. It entered into force on 24 December 1997. Pursuant to this Law the Council of Ministers has responsibility for carrying out the policies and decisions in the fields as specified by the Constitution of Bosnia and Herzegovina. (Article 2). The Ministry of Foreign Affairs, the Ministry of Civil Affairs and Communications and the Ministry of Foreign Trade and Economic Relations were created by this Law (Article 42).

113. The Ministry of Civil Affairs and Communications has responsibility for: Citizenship, immigration, refugee and asylum policy and regulation and international and inter-entity criminal law enforcement, including relations with Interpol. Additionally, it has responsibility for the establishment and operation of common and international communication facilities, regulation of inter-entity transportation and the budget of the common institutions of Bosnia and Herzegovina (Article 44).

114. In exercising its rights and duties, the Council of Ministers shall adopt decrees, decisions, instructions, conclusions and other normative acts (Article 16). Further, decisions which require signature enter into force when signed by the Co-Chairs and Vice-Chair. Other decisions enter into force on the day of the adoption of the minutes of the meeting at which the decision was taken, unless the Council of Ministers decides otherwise (Article 20).

115. Pursuant to this Law, the Council of Ministers shall more precisely define the scope and structure of the staff of the services of the Council of Ministers within 15 days of the entry into force of this Law (Article 22). The Minister and Deputy Ministers of the each Ministry shall within 15 days from the entry into force of this law by consensus pass a Regulation on the Internal Organisation of the Ministry with the prior consent of the Council of Ministers.

116. The Regulation on Internal Organisation of the Ministry shall establish internal organisational units, regulate the appointment of managers, employees with special authorisations, determine the distribution of the tasks and regulate other issues concerning the management of the Ministry. (Article 49, paragraph 1). Further, the hiring of staff shall be done in accordance with the principle of equitable representation of the constituent peoples of Bosnia and Herzegovina and others within 30 days of the adoption of the Regulation on Internal Organisation of the Ministry (Article 49, paragraph 3). Finally, the Council of Ministers shall, within 30 days after entry into force of this Law, decide in which manner existing administrative bodies performing functions which are within the competence of Bosnia and Herzegovina will be continued, modified or dissolved (Article 51).

**(e) New Law on the Council of Ministers**

117. The new Law on the Council of Ministers was adopted on 14 April 2000 and entered into force in November 2000 (OG BiH 11/00). Pursuant to Article 38 three additional ministries were created, the Ministry of BiH Institutions Treasury, the Ministry for European Integration and the Ministry of Human Rights and Refugees. Within 30 days from the entry into force of this Law, the Council of Ministers shall pass a decision on the way of continuation of work, modification or

dissolution of the existing administrative bodies, which perform duties from within the responsibilities of Bosnia and Herzegovina (Article 50).

### (f) Law on the Court of Bosnia and Herzegovina

118. The Law on the Court of Bosnia and Herzegovina (OG BiH 29/00) was published on 29 November 2000 and became effective as of 8 December 2000. The Law provides for a competent court on the State level. Article 14 provides, generally, that the Court shall have administrative jurisdiction over actions taken against final administrative acts or silence of administration of the institutions of Bosnia and Herzegovina.

119. The Court of Bosnia and Herzegovina has not been established to this day.

## V. COMPLAINTS

120. The applicants complain, generally, about inhuman and degrading treatment by the Ministry for Civil Affairs and Communications of Bosnia and Herzegovina. They allege a violation of Article 23 paragraph 2 ("everyone without any discrimination, has the right to equal pay for equal work.") of the Universal Declaration on Human Rights of 1948 and of Article 4 paragraphs 3 and 4 of the European Social Charter. Additionally, they allege a violation of Article 6 paragraph 1 of the European Convention on Human Rights.

## VI. SUBMISSIONS OF THE PARTIES

### A. The respondent Party

121. With respect to the admissibility of the applications, the respondent Party in its submission of 9 November 1999 argues that the applicants have failed to exhaust the domestic remedies available to them. Specifically, the respondent Party argues that the applicants filed their complaints with the Municipal Court I in Sarajevo between 27 to 30 November 1998 respectively and applied to the Chamber on 15 July 1999. Accordingly, the cases had only been pending for a few months at the time of submission and as such a reasonable time limit for these cases to be heard has not expired.

122. However, in its submission to the Chamber, dated 1 December 2000 and during the public hearing, the respondent Party stated that pursuant to the Law on Civil Procedure of the Federation (OG FbiH 42/98, 3/99) the courts of the Federation are not competent to hear cases involving the State. The respondent Party goes on to state that "there is no guilt on Bosnia and Herzegovina's side because, under Article III of BiH Constitution, the jobs within the judicial competence do not fall within the scope of the Institutions of Bosnia and Herzegovina, so Bosnia and Herzegovina has no court of regular competence." Further, as the State does not have a public attorney's office, there is no legal representative for the State. Additionally, during the public hearing the respondent Party stated that the Council of Ministers issued a decision authorising one representative to appear in court when the State is one of the respondent Parties. However, this representative only has authority to seek postponement of such hearings for some reasonable time until the date of the establishment of the public attorney's office on the State level.

123. With respect to the merits, in its letter to the Chamber dated 15 September 1999, requesting more time to submit its observations, the respondent Party points out the fact that the Council of Ministers has discussed the status of employees who were put on the waiting list on several occasions. During their 15th session, held on 13 July 1999, the Council of Ministers, under item 18.1, has "concluded that the co-chairman of the Council of Ministers shall decide about the final solution of the labour and legal status of the employees on the waiting list, after the Legal Department first prepares an Opinion on this issue".

124. In its observations submitted to the Chamber on 9 November 1999, the respondent Party argued that the employment of workers was done in accordance with the Law on the Council of

Ministers and the Rules of Internal Organisation. Pursuant to these documents the number of ministries was reduced and therefore the number of employees had to be reduced. Further, these documents contained provisions that required that there be a fair balance among the constituent nations. For these reasons, the applicants were not employed with the Ministry.

125. Additionally, the respondent Party argues that the labour and legal status of these workers was not solved in either of these documents. Therefore, the Council of Ministers adopted the decision on allowances for the workers from the former State bodies of the Republic dated 10 September 1998 by which only the right to allowances for the workers of the former State bodies of the Republic was established. The respondent Party concedes that the legal labour status of the applicants was not solved by this decision.

126. During the public hearing the agent of the respondent Party acknowledged that there is a legal vacuum concerning the employment status of the applicants. Further, the agent stated that the Law on the Council of Ministers did not provide for the legal continuity of the prior Ministries. Finally, the respondent Party did not deny the legal existence of the Law on State Administration, and seemed to argue, consecutively, that either it does not apply, or that it does apply and has been followed.

### B. The applicants

127. In response, the applicants essentially maintain their claims. They further reiterated that the respondent Party's observations merely confirmed the crux of their claims, namely that they have not received procedural decisions regulating their labour relations. As a consequence, they cannot seek redress from the courts. Further, the applicants point out that the respondent Party either did not appear at all at the hearings before the domestic courts or appeared simply to postpone the hearings.

## VII. OPINION OF THE CHAMBER

### A. Admissibility

128. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

129. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. The Chamber has held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but (also) in practice, failing which they will lack the requisite accessibility and effectiveness… (M)oreover,… in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system… but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants." (see case no. CH/97/58, *Onić,* decision on admissibility and merits delivered on 12 February 1999, Decisions January-July 1999, paragraph 38). It is incumbent on the respondent Party claiming non-exhaustion to satisfy the Chamber that there was an effective remedy available.

130. In its observations of 9 November 1999, the respondent Party essentially objects to the admissibility of the applications on the ground that domestic remedies have not been exhausted. However, during the public hearing the respondent Party stated its opinion that the domestic courts are not competent to hear cases where the State is the respondent Party. Further, as the State does not have a public attorney's office there is no legal representative for the State before the courts. Finally, the respondent Party acknowledged that a court on the State level has not been established. Clearly, the statements provided by the respondent Party at the public hearing contradict the objections made in the respondent Party's observations of 9 November. When this contradiction was pointed out to the agent of the respondent Party during the public hearing, she stated that whilst she does not retract these statements, she stands by the objections in the written observations.

131. The applicants, except for Dženana Šehović, initiated lawsuits before the Municipal Court I in Sarajevo between November and December 1998. However, they only submitted claims for compensation, not for regulating their labour status, as they do not have procedural decisions from which to appeal. The Municipal Court has not declared itself incompetent to hear cases against the State, nor does it appear that the State has made a motion to have the cases dismissed for lack of jurisdiction. However, the respondent Party has stated clearly that it does not believe that the Municipal Court has jurisdiction over it, nor has it bothered to defend itself properly in the lawsuits. In these conditions, it appears from the outset that a question arises as to whether these alleged domestic remedies are effective even in theory.

132. Further, the respondent Party has failed to address the arguments put forward by the applicants, namely that they can not even go to court to challenge their labour status as no final procedural decision concerning their employment has been given. Without such a decision there is no domestic remedy to pursue, even if the State were to accept the jurisdiction of the courts of the Federation.

133. The European Court of Human Rights has pointed out in *Akdivar and others v. Turkey* (Reports of Judgments and Decisions 1996), that the purpose of the exhaustion requirement is to afford the respondent Parties the opportunity of preventing or putting right the violation alleged against them, before those allegations are put forth before the European Court of Human Rights. This rule is based on the assumption, reflected in Article 13 of the Convention, with which it has a close affinity, that there is an effective remedy in the domestic system (see among other authorities, *Selmouni v. France,* Reports of Judgments and Decisions 1999). In this case, the Chamber notes that: 1) the respondent Party concedes that the applicants do not have the necessary procedural decisions upon which to challenge the legality of the decision effectively terminating their employment, 2) there is no State Court and 3) there is no State attorney appointed to represent the State before the Federation courts, which they claim lack jurisdiction anyway. Thus, even though it has been over six years since Bosnia and Herzegovina came into existence there is simply no effective domestic remedy for the alleged violations of which the applicants complain.

134. The burden of proof is on the respondent Party to establish that there was a remedy available to the applicants that they failed to exhaust. In light of the above, the Chamber finds that the respondent Party has failed to meet its burden. In these cases the remedies do not even appear to be effective in theory much less practice. Further, since the respondent Party claims that the domestic courts have no jurisdiction in these cases they are barred from arguing that the remedies are effective. In these circumstances, the Chamber is satisfied that the applicants cannot be required to exhaust any further domestic remedies for the purposes of Article VIII(2)(a) of the Agreement.

135. As no other ground for declaring these cases inadmissible have been put forward or is apparent the Chamber declares the applications admissible in their entirety.

## B. Merits

136. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the State 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

### 1. Article 6 of the Convention

137. The Chamber will now consider the allegation that there has been a violation of Article 6 of the Convention in that the applicants complain that they have been denied access to court.

1. Article 6 of the Convention provides in relevant part:

> "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. . . "

138. The Chamber notes that the European Court of Human Rights held in the past that Article 6(1) does not extend to "disputes relating to the recruitment, careers and termination of civil servants" (see eg., *Massa v. Italy* judgment of 24 August 1993, Series A No 265-B p. 20, paragraph 26). The case law in this area had become convoluted and difficult to apply. Therefore, the Court recently adopted a functional approach to analysing this issue (i.e. based on an examination of the jobs and duties of a particular applicant). Keeping in mind the importance of the protections afforded by Article 6 the Court has adopted a restrictive interpretation. Specifically, the Court has found that the only persons excluded from Article 6(1) protection are those applicants whose duties involve "direct or indirect participation in the exercise of powers conferred by public law and duties assigned to safeguard the general interests of the State or of other public authorities" (see *Pellegrin v. France* judgment of 8 December 1999 to be published in Reports of Judgments and Decisions 1999).

139. During the public hearing the Chamber asked the respondent Party and the witness what the official responsibilities of the applicants were, in particular Almasa Kajtaz (CH/98/1309) and Dobrilja Bijedić (CH/98/1312), in order to decide on the applicability of Article 6. The respondent Party and the witness answered that only Ministers or Deputy Ministers had decision-making authority. The Chamber further notes that the respondent Party did not raise any objection as to the applicability of Article 6 at any point during the proceedings and therefore any doubts must be resolved in favour of the applicants.

140. The Chamber must now examine whether there has been a violation of the applicants' right of access to a court. In the case of *Golder v. U.K.*, the European Court of Human Rights held that Article 6 "embodies the right to a Court" wherein the other rights guaranteed under Article 6 are respected (*Golder v. U.K.*, judgment of 21 February 1975, Series A vol. 18, page 18). In reaching this conclusion the Court noted the importance given to the concept of the "rule of law" throughout the European Convention of Human Rights. In the preamble of the Convention the signatory governments declare that they are "resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration of 10 December 1948". Further, citing the reasoning of the European Commission of Human Rights, the Court in *Golder* explained that "Article 6 (1)... is intended to protect in itself the right to a good administration of justice, of which the right that justice should be administered constitutes an essential and inherent element. Further, the principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally "recognised" fundamental principles of law; the same is true of the principle of international law which forbids the denial of justice." The Court then found that Article 6(1) must be read in light of these principles.

141. However, the right of access to court enshrined in Article 6 is not absolute; it may be subject to limitations. However, these limitations cannot reduce or restrict the access left to the individual in such a way that "the very essence of the right is impaired" (see among other authorities, *Guerin v. France* judgment of 29 July 1998, 1998-V). Furthermore, a limitation will not be compatible with Article 6(1) if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Bellet v. France* judgment of 20 November 1995, Series A vol. 333).

142. In the present cases, the applicants initiated lawsuits before the Municipal Court I in Sarajevo attempting to, at least, obtain compensation. These cases are still pending. During the public hearing, the State stated its position that the courts of the Federation are not competent to hear cases involving the State. In support of this argument it cites Article 28 of the Law on Civil Proceedings which provides that the courts of the Federation have subject matter jurisdiction as determined only by the laws of the Federation or of the Cantons. ("OG FbiH 42/98).

143. Further, the State argues that, as there is no attorney's office on the State level, there is no attorney competent to represent the State before the domestic courts. However, it does not appear

that the State has argued this before the domestic courts thereby putting the applicants on notice that they do not accept even this claim. Additionally, the Chamber notes that the Law on the Court of Bosnia and Herzegovina came into force on 8 December 2000. However, to this day no State Court has been established. Accordingly, it becomes clear, and the respondent Party concedes, that there is simply no court in Bosnia Herzegovina wherein the applicants can pursue their claims.

144. The Municipal Court I has not declared itself incompetent to hear cases involving acts or omissions of the state authorities. However, given the fact that the State does not believe that the Court has jurisdiction over it, it is unlikely that any decision that may be rendered in the applicants' favour would be respected. Regardless of whether the Federation Court has jurisdiction or not the failure of the State to participate in the proceedings has created extreme uncertainty for the applicants if not the complete absence of the right to a court.

145. In the case of *De Geouffre De La Pradelle v. France* (judgment of 16 December 1992, Series A no. 253-B) the European Court of Human Rights held that the degree of access afforded to an individual must be sufficient to afford individuals the "right to a court". Specifically, the Court stated that "the applicant was entitled to expect a coherent system that would achieve a fair balance between the authorities' interests and his own; in particular he should have had a clear, practical and effective opportunity to challenge an administrative act that was a direct interference with his right of property" (see id. at page 43, paragraph 34). In that case the Court found that the complexity of certain legislation regulating the designation of conservation of places of interest and the attendant complexity regarding how to calculate the time-limit for bringing an appeal against such designation created a level of legal uncertainty that was incompatible with Article 6(1).

146. In the present cases, the Chamber concludes that whether or not the Municipal Court eventually declares itself competent to hear these cases, the overall legal system for adjudicating these claims is not sufficiently coherent or clear**.** In fact, it can be concluded that the applicants simply do not have a court in which to actually have their claims heard. The opportunity to file a claim but not have the claim determined does not satisfy the requirements of Article 6(1). Having regard, therefore, to the circumstances of these cases as a whole, the Chamber finds that the applicants do not have a practical, effective right of access to court in Bosnia and Herzegovina, the State therefore being in violation of Article 6(1) of the European Convention of Human Rights.

### 2. Article 13 of the Convention

147. The applicants essentially argued that they did not have an effective remedy before a domestic court. These cases were transmitted to the respondent Party under Article 13, which provides:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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

### 3. Article II(2)(b) of the Agreement

149. Under Article II of the Agreement, the Chamber has jurisdiction to consider (a) alleged or apparent violations of human rights as provided in the European Convention of Human Rights and its protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix. Under Article I(14) of the Agreement, the Parties shall secure to all persons within their jurisdiction the enjoyment of the aforementioned rights and freedoms without discrimination on any ground such as sex, race, colour, language, religion, political, or other opinion, national or social origin, association with a national minority, property, birth or other status.

150. The Chamber has held in the case of *Hermas* (case no. CH/97/45, decision on admissibility and merits delivered on 18 February 1998, Decisions and Reports 1998, paragraph 118) that the prohibition of discrimination is a central objective of the General Framework Agreement to which the Chamber must attach particular importance. Under Article II(2)(b) it has jurisdiction to consider alleged or apparent discrimination in the enjoyment of the rights and freedoms provided for in, *inter alia*, the International Covenant on Civil and Political Rights (hereinafter "ICCPR").

151. The Chamber will consider the allegation of discrimination under Article II(2)(b) of the Agreement in relation to Article 25(c) of the ICCPR, which as far as relevant, reads as follows:

> "Every citizen shall have the right and the opportunity, without (any discrimination) and without unreasonable restrictions:
> ....
>
> c) To have access, on general terms of equality, to public service in his country.
>
> ..."

#### (a) Impugned acts and omissions

152. The Chamber will now examine which precise acts and omissions affecting the applicants can be imputed to the State. The acts possibly attracting the responsibility of the State under the Agreement include: unequal pay after the applicants were declared "unassigned"; the failure to apply the Law on State Administration; the failure to give the applicants procedural decisions terminating their employment; the failure to inform the applicants of the reasons why they were not given assignments; the basis upon which it was decided which employees of the former ministries would be formally assigned and which would not; and finally the consideration of each applicant's ethnic origin in the decision making process.

153. All of these acts potentially constitute an interference with the applicants' rights under Article 25(c) of the ICCPR, as well as a potential failure of the State's positive obligation to secure protection of those rights without discrimination.

#### (b) Differential treatment and possible justification

154. In order to determine whether the applicants have been discriminated against, the Chamber must first determine whether the applicants were treated differently from others in the same or a relevantly similar situation. 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 not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see e.g. case no. CH/97/67 *Zahirović,* decision on admissibility and merits delivered on 8 July 1999, Decisions January-July 1999, paragraph 120; and case no. CH/97/50 *Rajić,* decision on admissibility and merits delivered on 7 April 2000, Decisions January – July 2000, paragraph 53).

155. In the present cases, it is obvious that the applicants were treated differently from the similarly situated employees of the former Ministries who were formally employed by the new ministries. The applicants received less salary for a period of time and were eventually *de facto*

removed from their jobs without receiving procedural decisions resolving their labour status as required by the Law on State Administration. Therefore, the question becomes whether the process of recruitment of employees for the new Ministry involved differential treatment on prohibited grounds.

156. With respect to the selection process referred to above, the respondent Party in both its observations and during the public hearing stated that the selection was done in accordance with the law which required the staff of the Ministries to reflect an "equitable representation" of the constituent peoples of Bosnia and Herzegovina. The respondent Party further referred to the Rules on Internal Organisation and stated that education and work experience were taken into account when selecting people for assignments in the new Ministry.

157. During the public hearing the witness, Deputy Minister Rečica, explained the process by which it was determined which employees were assigned and which were not. The Chamber notes in the first instance that he explicitly stated that this process was informal and not established by law. He then stated that the criteria were as follows: 1) duties that were taken over and continued; 2) qualifications and competence of people who could apply to relevant new positions; 3) recommendation of previous supervisors; and 4) regard to ethnic origin in order to achieve an ethnic balance of the constituent peoples of Bosnia and Herzegovina as prescribed by Article 49 of the Law on the Council of Ministers.

158. However, upon further questioning the following was established: persons were not asked to identify their ethnic origin, so that it is unclear how this system of equal representation was applied; there were former employees of mixed origin who did not fit neatly into any of these categories; there was never an application process, and the applicants were never told why they were not chosen so as to be able to contest the decision. Further, neither the witness nor the respondent Party explained whether the criterion used within this system of "equal representation" was residency or ethnic origin. It was established, however, that two-thirds of the employees were to be Bosniak or Croat from the Federation and one-third were to be Serb from Republika Srpska. This obviously created a problem for a Serb living in the Federation or vice-versa. When specifically asked about the treatment of someone in this situation, no specific response was forthcoming. Further, a number of applicants appear to have been replaced by persons of the same ethnic origin. Accordingly, it becomes even less clear in what way the "equal representation" requirement was applied and the reasons for assignment or non-assignment.

159. It does become clear, however, that there was differential treatment of all of the applicants, based on ethnic origin. In such a situation, there is a particular onus on the respondent Party to justify otherwise prohibited differential treatment based on any ground mentioned in Article I(14) of the Agreement, such as race, colour and ethnic or national origin. In previous cases, the Chamber has taken a similar approach (see e.g., the above mentioned *Hermas* decision paragraph 86 et seq., case no. CH/97/46, *Kevešević,* decision on the merits delivered on 10 September 1998, Decisions and Reports 1998, paragraph 92, and case no. CH/98/756, *Đ.M.*, decision on admissibility and merits delivered on 14 May 1999, Decisions January-July 1999, paragraph 72).

160. In these cases the aim of this differential treatment appears to be the promotion of the public confidence in the administration of the State government in the aftermath of the war. In fact, this sort of necessity for "equal representation" is found throughout the General Framework Agreement and seems to have been deemed necessary for the cohesion of Bosnia and Herzegovina at this point in history. Further, as stated by the witness, prior to the reconstitution of the Council of Ministers there were no Serbs from Republika Srpska working for the Ministries, a factual inequality that the responsible authorities might reasonably consider legitimately needed to be redressed.

161. The European Court of Human Rights has held in the *Belgian Linguistic* case (Judgment of 23 July 1968, Series A Vol. 6) that not all differential treatment is unacceptable and that "certain legal inequalities tend only to correct factual inequalities." Accordingly, in light of the case law of the European Court and the above stated, the Chamber accepts that the differential treatment arising from the attempt to obtain fair representation of the major ethnic groups in public service in Bosnia and Herzegovina may pursue a legitimate aim.

162. The next question becomes whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In this regard, the Chamber notes that the process of assigning employees to posts within the new Ministry was not even remotely transparent, making it almost impossible to assess.

163. Even allowing that the aim to achieve a national balance is legitimate in this context, in order for this aim to be achieved in a legitimate manner the process must at the very least be transparent, fair and objective. The Court of Justice of the European Communities in the case of *Badeck and Others v. Germany*, held that a directive which provides for special treatment of women in employment sectors where women have been historically underrepresented is legitimate provided that "the rule (directive) guarantees that candidatures are the subject of an objective assessment which takes account of the specific and personal situations of all candidates" (European Court Reports 2000 Page I-1875).

164. In the cases before the Chamber, no clear reasons were given as to why these particular applicants were not employed. Specific questions regarding the actual implementation of the "equal representation" requirement went unanswered. However, what has become clear throughout the proceedings is that decisions were taken not only based upon national origin but also based upon political considerations and agreements (see paragraphs 97 and 158 above). Additionally, it appears that even the Rules on Internal Organisation were not followed (see paragraphs 16 and 17 above). In this regard, the Chamber notes that Article 51 of the Law on the Council of Ministers required the Council of Ministers, within 30 days after the entry into force of the Law, to decide precisely this issue, namely, the manner in which the existing administrative bodies would be continued, modified or dissolved. The Law did not envision a permanent legal vacuum. These facts, together with the established facts that the applicants were never interviewed, never given reasons for the decisions and never given proper procedural decisions concerning their labour relations, make it clear that the selection process was arbitrary.

165. Further evidence of the vague and inadequate selection process is found with respect to the applicants of mixed origin or mixed marriages, or the applicant who is of Serb origin but living in the Federation. In these cases, again, the Chamber cannot find that the means were proportional to the legitimate aim pursued, as these persons were simply not even provided for in the employment scheme. In fact, during the public hearing, the witness acknowledged that it created a problem if someone did not fit squarely into one ethnic group. In fact, he stated that they wanted to resolve this issue in the Council of Ministers, but it was not resolved (see paragraph 97 above).

166. Specifically, the Chamber recalls that Dobrila Bijedić (CH/98/1312) is of mixed ethnic origin and in a mixed marriage. In 1990 she declared herself as a "Bosnian Catholic". She alleges that she was told by Deputy Minister Križanović that she would not be employed as a Croat since she did not declare herself as such. A person of Croat origin replaced the applicant. The respondent Party has not denied these allegations.

167. Radenka Cvijetić (CH/98/1322) is of Serb origin and lives in the Federation. She alleges that she was discriminated against because of the fact that she was of Serb origin living in the Federation. In this respect the Chamber recalls that at the public hearing no answer was forthcoming regarding how someone in this situation would be dealt with.

168. Jasna Šljivo (CH/98/1323) is of mixed ethnic origin, her father being Croat and her mother Bosniak. The applicant alleges, and the respondent Party does not deny, that she was told by her supervisor that he could not help her because she is from a mixed family and he was Bosniak and could only help Bosniaks. The applicant further alleges, contrary to the witness' statement at the public hearing, that in 1998 she was required to declare her ethnic origin. She declared herself as a Croat. The applicant alleges that someone of Bosniak origin filled her position.

169. Based on all of the above, the Chamber concludes that the applicants have been discriminated against on the ground of national and ethnic origin in their enjoyment of the right to access to public service under Article 25(c) of the ICCPR. Accordingly, Bosnia and Herzegovina is in violation of its obligations under Article I of the Agreement to secure to all persons within its jurisdiction, without discrimination on any ground, the rights guaranteed by the treaty in question.

## VIII. REMEDIES

170. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement.

171. With regard to possible remedies, the Chamber first recalls that in accordance with its order for proceedings in the respective cases, all applicants were afforded the possibility of submitting their claims for compensation within the time-limit fixed by the Chamber. All of the applicants, except for Azira Sivčević (CH/98/1314) and Altijana Mešić (CH/98/1318) submitted their claims for compensation in a timely manner. All of the applicants request resolution of their labour status and compensatory and non-compensatory damages.

172. Ms. Almasa Kajtaz (CH/98/1309) claims compensation for the following: 1) loss of income from 1 June until 31 December 1998 in the amount of 200 Convertible Marks (Konvertibilnih Maraka "KM") per month totalling 1.400 KM; 2) loss of remuneration for meal tickets and transportation from 1 June until 31 December 1998 amounting to a total of 875 KM; 3) loss of remuneration for vacation days and religious holidays amounting to a total of 1000 KM; 4) loss of humanitarian support received by assigned employees from 1 June 1998 to 31 December 1998 in the amount of 300 KM per month totalling 2.100 KM; 5) loss of income from 1999 in the amount of 800 KM per month from 1 January until 30 June 1999 and 920 KM per month from 1 July until 31 December 1999 amounting to a total of 10.320 KM; 6) loss of remuneration for meal tickets and public transportation for 1999 amounting to a total of 1.920 KM; 7) loss of remuneration for vacation days for 1999 amounting to 600 KM; 8) loss of humanitarian support received by other employees in the amount of 300 KM per month for 1999 totalling 3.600 KM; 9) loss of income from 1 January to 31 December 2000 amounting to 1.440 KM; 10) loss of remuneration for vacation days for 2000 amounting to 600 KM.; 11) loss of humanitarian support received by assigned employees from 1 January to 31 December 2000 in the amount of 300 KM per month totalling 3.600 KM; 12) compensation for stress and psychological suffering in the amount of 30 KM per day from 8 September 1998 to the present.

173. Additionally, Ms. Kajtaz asks that the respondent Party be ordered to issue a procedural decision concerning her labour status.

174. Ms. Dobrila Bijedić (CH/98/1312) claims compensation for the following: 1) loss of income (difference in salaries) from 1 June 1998 until 31 December 1998 in the amount of 200 KM per month totalling 1.400 KM; 2) loss of remuneration for meal tickets and transportation from 1 June until 31 December 1998 amounting to a total of 875 KM; 3) loss of remuneration for vacation days and religious holidays amounting to a total of 1000 KM; 4) loss of humanitarian support received by assigned employees from 1 June 1998 until 31 December 1998 in the amount of 300 KM per month totalling 2.100 KM; 5) denial of support in case of death of a close family member in the amount of three monthly salaries, that was given to assigned employees, in the amount of 2.400 KM; 6) loss of income for 1999 in the amount of 800 KM per month totalling 9.600 KM; 7) loss of remuneration for hot meal tickets and public transportation for 1999 amounting to 1920 KM; 8) loss of remuneration for vacation days for 1999 in the amount of 600 KM; 9) loss of humanitarian support received by assigned employees for 1999 in the amount of 300 KM per month totalling 3.600 KM; and 10) compensation for mental suffering and stress in the amount of 30 KM per day from 8 September 1998 to the present.

175. Ms. Bijedić also asks that the respondent Party be ordered to issue a procedural decision concerning her labour status.

176. Ms. Azira Sivčević (CH/98/1314) claims compensation for the following: 1) loss of income (difference in salaries) from 1 June 1998 until 31 December 1998 in the amount of 200 KM per month totalling 1.400 KM; 2) loss of remuneration for meal tickets and transportation from 1 June until 31 December 1998 amounting to a total of 875 KM; 3) loss of remuneration for vacation days and religious holidays amounting to a total of 1.000 KM; 4) loss of humanitarian support received by assigned employees from 1 June 1998 until 31 December 1998 in the amount of 300 KM per month totalling 2.100 KM; 5) loss of income from 1 January 1999 to 1 March 1999 which amounts to

1.000 KM; 6) loss of remuneration for meal tickets and transportation from 1 January to 1 March 1999 in the amount of 320 KM; and 7) compensation for moral suffering, stress and psychological pain from 8 September 1998 to 31 December 2000 in the amount of 30 KM per day which amounts to 25.200 KM.

177. Ms. Altijana Mešić (CH/98/1318) claims compensation for the following: 1) loss of income (difference in salaries) from 1 June 1998 until 31 December 1998 in the amount of 200 KM per month totalling 1.400 KM; 2) loss of remuneration for meal tickets and transportation from 1 June until 31 December 1998 amounting to a total of 875 KM; 3) loss of remuneration for vacation days and religious holidays amounting to a total of 1.000 KM; 4) loss of humanitarian support received by assigned employees from 1 June 1998 until 31 December 1998 in the amount of 300 KM per month totalling 2.100 KM; 5) loss of income from 1 January 1999 to 15 February 1999 which amounts to 750 KM; 6) loss of remuneration for meal tickets and transportation from 1 January to 1 March 1999 in the amount of 260 KM; and 7) compensation for moral suffering, stress and psychological pain from 8 September 1998 to 31 December 2000 in the amount of 30 KM per day which amounts to 25.200 KM.

178. Ms. Rasema Begić (CH/98/1319) claims compensation for the following: 1) loss of income (difference in salaries) from 1 June 1998 until 31 December 1998 in the amount of 200 KM per month totalling 1.400 KM; 2) withholding of hot meal compensation from 1 June to 31 December 1998 amounting to 595 KM; 3) loss of remuneration for vacation days and religious holidays amounting to a total of 1000 KM; 4) loss of income from 1 January to 31 March 1999 (the time period within which the applicant continued working) in the amount of 650 KM per month; 5) loss of remuneration for hot meal tickets from 1 January to 31 March 1999 in the amount of 120 KM per month; 6) loss of income and benefits from 1 April 1999 to the present; 7) loss of payments for pension and social security contributions from 1 January 1999 to the date on which the applicant's labour status is resolved; and 8) compensation for moral suffering, stress and physical pain from 8 September 1998 to the date on which the Chamber issues its decision, in an amount to be determined by the Chamber in accordance with its usual practise.

179. Ms. Begić further asks that the respondent Party be ordered to issue a procedural decision concerning her labour status and re-employ her to her previous post.

180. Mr. Elvedin Dević (CH/98/1321) claims compensation for the following: 1) difference in salary from 1 June until 31 December 1998; 2) loss of remuneration for hot meal and transportation tickets for 1 June until 31 December 1998; 3) loss of remuneration for vacation days and religious days in 1998; 4) loss of income and other benefits for 1999; and 5) compensation for moral suffering, stress and mental pain from 8 September 1998 in an amount that the Chamber determines.

181. Mr. Dević was re-employed by the Ministry for Civil Affairs and Communication on 1 September 2000. He maintains his compensation claims.

182. Ms. Radenka Cvijetić (CH/98/1322) claims compensation for the following: 1) difference in salary from 1 June until 31 December 1998; 2) loss of remuneration for hot meal and transportation tickets for 1 June until 31 December 1998; 3) loss of remuneration for vacation days and religious days for 1998; 4) loss of income and other benefits for 1999; and 5) compensation for moral suffering, stress and mental pain from 8 September 1998 in an amount to be determined by the Chamber.

183. Ms. Cvijetić informed the Chamber that she was re-employed by the Ministry of Civil Affairs and Communications by a decision of 5 October 2000. The applicant maintains her claims for compensation.

184. Ms. Jasna Šljivo (CH/98/1323) requests compensation for the following: 1) loss of income from 1 June until 31 December 1998 in the amount of 200 KM per month totalling 1.400 KM; 2) loss of remuneration for meal tickets and transportation from 1 June until 31 December 1998 amounting to a total of 875 KM; 3) loss of remuneration for vacation days and religious holidays amounting to a total of 1000 KM; 4) loss of humanitarian support received by assigned employees from 1 June until 31 December 1998 of 300 KM per month amounting to 2.100 KM; 5) loss of

income for 1999 in the amount of 530 KM from 1 January through 30 June totalling 3.180 KM and 620 KM per month from 1 July through 1 August totalling 620 KM; 6) loss of humanitarian support received by assigned employees from 1 January until 1 August 1999 in the amount of 300 KM per month totalling 2.400 KM; and 7) compensation for moral sufferings, stress and mental pain from 8 September 1998 until December 1999 in the amount of 10.000 KM. Ms. Šljivo's total claim for compensation amounts to 20.575 KM.

185. Ms. Šljivo, who gained other employment on 1 August 1999 maintains her claim for pecuniary and non-pecuniary compensation. Further, she requests that the respondent Party be ordered to complete her employment book.

186. Ms. Dženana Šehović (CH/98/1326) requests compensation for the following: 1) contributions to the pension and social security funds; 2) loss of income from 1 June until 31 December 1998 in the amount of 200 KM per month totalling 1.400 KM; 3) loss income from 1 January 1999 until 1 March 199 in the amount of 1.000 KM; 4) loss of remuneration for hot meal tickets from 1 June 1998 until 1 March 1999 in the amount of 765 KM; 5) loss of remuneration for transportation tickets from 1 June 1998 until 1 March 1999 in the amount of 360 KM; 6) loss of remuneration for vacation and religious days in 1998 in the amount of 700 KM; and 7) compensation for mental suffering and stress because of the "termination of my employment" which was not substantiated and without reason, after many years of work for the respondent Party, in an amount to be determined by the Chamber in accordance with its usual practise.

187. The respondent Party did not submit observations on the claims for compensation either in writing or during the public hearing.

188. The Chamber considers it reasonable to hold that on account of the breaches found of Article 6(1) of the Convention and Article II(2)(b) of the Agreement in conjunction with Article 25(c) of the ICCPR the applicants have suffered loss of opportunity in connection with employment, as they were not treated fairly during the recruitment process and have not had their labour books completed, and have suffered emotional distress stemming from the uncertainty surrounding their employment status. Accordingly, on an equitable basis, the Chamber will order the respondent Party to pay each of the nine applicants a lump sum covering moral and pecuniary damage, including lost salaries and contributions. The Chamber considers it appropriate to award the amounts stated below to the applicants in recognition of the sense of injustice they have suffered as a result of their inability to have their legal labour status resolved, especially in view of the fact that they have all taken various steps to do so. Additionally, in the particular circumstances at hand the Chamber will also award the applicants in cases nos. CH/98/1314 Sivčević and CH/98/1318 Mešić the same sum, even though their claims for compensation were received out of time.

189. The Chamber considers it appropriate to award to each applicant the following amounts based on their specific claims for compensation, lost earnings for the time period during which they respectively continued coming to work and did not receive salary, average of lost salary for time period during which they remained unemployed, lost benefits, and moral damages. The sums should be paid to each applicant, at the latest, within 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.

a) Bosnia and Herzegovina is ordered to pay Ms. Kajtaz (CH/98/1309) a total of 9,155 KM for lost and income and benefits from 1 June 1998 through 31 March 1999 and an average of lost income, benefits and moral damages from 1 April 1999 through October 2001 in a lump sum of 20,000 KM ;

b) Bosnia and Herzegovina is ordered to pay Ms. Bijedić (CH/98/1312) a total of 9,155 KM for lost and income and benefits from 1 June 1998 through 31 March 1999 and an average of lost income, benefits and moral damages from 1 April 1999 through October 2001 in a lump sum of 20,000 KM;

c) Bosnia and Herzegovina is ordered to pay Ms. Sivčević (CH/98/1314) a total of 6,695 KM for lost income and benefits from 1 June 1998 through 29 February 1999, when the applicant found other employment, and 1,000 KM for moral damages;

d) Bosnia and Herzegovina is ordered to pay Ms. Mešić (CH/98/1318) a total of 6,385 KM for lost income and benefits from 1 June 1998 through 15 February 1999, when the applicant found other employment, and 1,000 KM for moral damages;

e) Bosnia and Herzegovina is ordered to pay Ms. Begić (CH/98/1319) a total of 5,965 KM for lost income and benefits from 1 June 1998 through 31 March 1999 and an average of lost income, benefits and moral damages from 1 April 1999 through October 2001 in a lump sum of 18,000 KM;

f) Bosnia and Herzegovina is ordered to pay Mr. Dević (CH/98/1321) a total of 4,000 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and an average of lost income, benefits and moral damages from 1 March 1999 through September 2000, when the applicant was re-employed by the Ministry, in a lump sum of 4,500 KM;

g) Bosnia and Herzegovina is ordered to pay Ms. Cvijetić (CH/98/1322) a total of 4,000 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and an average of lost income, benefits and moral damages from 1 March 1999 through October 2000, when the applicant was re-employed with the Ministry, in a lump sum of 7,000 KM;

h) Bosnia and Herzegovina is ordered to pay Ms. Šljivo (CH/98/1323) a total of 6,205 KM for lost income and benefits from 1 June 1998 through 31 January 1999 and average of lost income, benefits and moral damages from 1 February 1999 through 31 June 1999, when the applicant found other employment, in a lump sum of 3,000 KM;

i) Bosnia and Herzegovina is ordered to pay Ms. Šehović (CH/98/1326) a total of 4,225 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and 1,000 KM for moral damages;

190. The Chamber further awards simple interest at an annual rate of 10% (ten) percent as of the date of the expiry of the one month period set in paragraph 189 for the implementation of the present decision, on the sums awarded in paragraph 189 (a)-(i) or any unpaid portion thereof until the date of settlement in full (see e.g., case no. CH/00/6142, *Dušan & Mila Petrović*, decision on admissibility and merits delivered on 9 March 2001, paragraph 72).

## IX. CONCLUSIONS

191. For these reasons, the Chamber decides,

1. unanimously, to declare the applications admissible;

2. unanimously, that the applicants Azira Sivčević, Altijana Mesić, Rasema Begić, Elvedin Dević, Jasna Šljivo, and Dženana Šehovićs' right of access to court under Article 6 paragraph 1 of the European Convention of Human Rights has been violated, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

3. by 4 votes to 3, that the applicants Almasa Kajtaz, Dobrila Bijedić and Redenka Cvijetićs' right of access to court under Article 6 paragraph 1 of the European Convention of Human Rights have been violated, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, that the applicants have been discriminated against in their right to access to public service as guaranteed by Article 25(c) of the International Covenant on Civil and Political Rights, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary to examine the application under Article 13 of the Convention;

6. unanimously, to order Bosnia and Herzegovina to establish the legal labour relations of all of the applicants in accordance with the Law on State Administration;

7. unanimously, to order Bosnia and Herzegovina to pay to the applicants not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure the following sums:

a) to Ms. Kajtaz (CH/98/1309) a total of 9,155 KM for lost and income and benefits from 1 June 1998 through 31 March 1999 and an average of lost income, benefits and moral damages from 1 April 1999 through October 2001 in a lump sum of 20,000 KM ;

b) to Ms. Bijedić (CH/98/1312) a total of 9,155 KM for lost and income and benefits from 1 June 1998 through 31 March 1999 and an average of lost income, benefits and moral damages from 1 April 1999 through October 2001 in a lump sum of 20,000 KM;

c) to Ms. Sivčević (CH/98/1314) a total of 6,695 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and 1,000 KM for moral damages;

d) to Ms. Mešić (CH/98/1318) a total of 6,385 KM for lost income and benefits from 1 June 1998 through 15 February 1999 and 1,000 KM for moral damages;

e) to Ms. Begić (CH/98/1319) a total of 5,965 KM for lost income and benefits from 1 June 1998 through 31 March 1999 and an average of lost income, benefits and moral damages from 1 April 1999 through October 2001 in a lump sum of 18,000 KM;

f) to Mr. Dević (CH/98/1321) a total of 4,000 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and an average of lost income, benefits and moral damages from 1 March 1999 through September 2000 in a lump sum of 4,500 KM.

g) to Ms. Cvijetić (CH/98/1322) a total of 4,000 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and an average of lost income, benefits and moral damages from 1 March 1999 through October 2000 in a lump sum of 7,000 KM.

h) to Ms. Šljivo (CH/98/1323) a total of 6,205 KM for lost income and benefits from 1 June 1998 through 31 January 1999 and average of lost income, benefits and moral damages from 1 February 1999 through 31 June 1999 in a lump sum of 3,000 KM.

i) to Ms. Šehović (CH/98/1326) a total of 4,225 KM for lost income and benefits from 1 June 1998 through 29 February 1999 and 1,000 KM for moral damages.

8. unanimously, to order that simple interest at an annual rate 10% (ten percent) will be payable on the amount, or any unpaid portion thereof, awarded in conclusion 7 above outstanding to the applicant at the end of the period set out in those conclusions for such payment;

9. unanimously, to order Bosnia and Herzegovina to report to it not later than 7 October 2001 on the steps taken by them to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michele PICARD
President of the First Panel