DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/959

Ljiljana RADOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 7 May 2004 with the following members present:

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

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

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

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

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

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. She was employed by the Joint Services Unit of the Republic's Organs ("Služba za zajedničke poslove republičkih organa") of the Republic of Bosnia and Herzegovina in Sarajevo before the outbreak of the armed conflict. During the armed conflict, she was unable to report to work because she had lived in Nedžarići, seven kilometres from her working place, which was on the first front line. After the end of the armed conflict she attempted to return to work. The applicant sought legal redress to regain her position before the court, but court proceedings were suspended and her case was referred to the Cantonal Commission for Implementation of Article 143 of the Labour Law ("the Cantonal Commission").

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

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

3. The application was introduced on 16 September 1998 and registered on 17 September 1998.

4. On 24 June 1999 the applicant's attorney informed the Chamber about the course of civil proceedings before the Municipal Court I Sarajevo in the applicant's case.

5. On 25 October 1999 the Chamber transmit the application to the respondent Party for its observations on the admissibility and merits under Article 6 of the Convention.

6. The respondent Party submitted its written observations on the admissibility and merits to the Chamber on 23 December 1999.

7. The Chamber transmitted the respondent Party's observations to the applicant for her reply on 30 December 1999.

8. The applicant did not reply, and on 13 December 2000, the Chamber again requested the applicant to submit responsive observations. The applicant replied on 18 December 2000.

9. The respondent Party submitted additional written observations on 19 April 2001.

10. The Chamber transmitted the respondent Party's additional observations to the applicant for her comments on 2 May 2001.

11. The respondent Party submitted additional written observations on 28 November 2001, and these were transmitted to the applicant for her comments on 12 December 2001.

12. The Chamber requested additional written information from the applicant on 15 December 2003. The applicant submitted additional written observations on 18 December 2003, and these were transmitted to the respondent Party on 19 December 2003.

13. The Commission deliberated on the admissibility and merits of the case on 8 March 2004 and 7 May 2004. On the latter date it adopted the present decision.

III. FACTS

14. The applicant is of Serb origin.

15. The application relates to the termination of the applicant's employment at the "Joint Services Unit of the Republic's Organs" ("Služba za zajedničke poslove republičkih organa") of the Republic of Bosnia and Herzegovina as a cleaning lady. The applicant was unable to report for work after the outbreak of hostilities because she lives in Nedžarići, seven kilometres from her working place, which was on the first front line. On 22 May 1992, the applicant left Sarajevo for health reasons. She lived abroad in Germany, where she had an operation. She returned to Sarajevo on 12 June 1996.

16. The applicant states that she reported for work when she returned to Sarajevo, but was informed that her employment had been terminated because, without good reason, she had not reported for work during the hostilities. On 24 June 1996 the applicant received a decision on termination of her employment as of 20 May 1992. The decision was issued on 30 April 1993 by the Director of the Joint Services Units of the Parliament of the Republic of Bosnia and Herzegovina. The applicant appealed against the decision to the Director. The Director refused the applicant's appeal as ill-founded by a decision of 8 July 1996.

17. The applicant commenced proceedings before the Court of First Instance I Sarajevo on 4 September 1996. The Court issued a default judgement on 18 November 1996 because the defendant (Federal Government-Joint Services Unit) did not appear at the hearing, without good reason. A judgement was issued in the applicant's favour. The Court annulled the 20 May 1992 decision on employment termination and ordered the defendant to reinstate the applicant.

18. The defendant appealed against this judgement on 13 December 1996. The Court of First Instance I Sarajevo considered the appeal as a request for *restitutio in integrum* and allowed the defendant's request without issuing any procedural decision.

19. On 21 December 1999 the applicant submitted a request to her employer for her labour relationship to be reinstated in accordance with Article 143 of the Labour Law of the Federation of Bosnia and Herzegovina. Because she did not receive a reply, she lodged an appeal to the Cantonal Commission for the Implementation of Article 143 on 27 November 2000, but the Commission did not decide upon her appeal until 6 August 2001 (see paragraph 21 below).

20. On 21 December 2000 the Municipal Court I Sarajevo issued a procedural decision by which the procedure in the case was suspended on the grounds that the file would be transferred to the Cantonal Commission for further proceedings.

21. The Cantonal Commission, by its procedural decision of 6 August 2001, determined that the applicant's appeal to the Commission was well founded and ordered the employer (the Government of the Federation of Bosnia and Herzegovina, Joint Services Unit Sarajevo) to act in accordance with Article 143, paragraphs 2 through 4 of the Law on Labour, i.e. to establish the applicant's labour and working status as an employee on the waiting list from the date she submitted her request through 5 May 2000 and to determine the termination of the employee's labour relationship in accordance with the law. The Commission also ordered the employer to determine the amount of severance pay to be paid to the applicant and to enter into an agreement on severance pay with the applicant.

22. The employer did not act in accordance with the Commission's decision. It neither established the labour and working status of the applicant nor paid her severance pay. Instead, the employer appealed to the Federal Commission for Implementation of Article 143 of the Labour Law ("the Federal Commission").

23. On 20 May 2003 the applicant submitted a claim before the Ombudsman of the Federation of Bosnia and Herzegovina, requesting protection of her right to work.

24. On 10 June 2003 the Federation Ombudsman requested the Federal Commission to provide information about the measures it had taken in the applicant's case. The Federation Ombudsman emphasised that two years had passed since the Cantonal Commission issued its procedural decision in the applicant's case and that the applicant had intervened before the Federal Commission on several occasions in order to speed up the proceedings. On each occasion the applicant received the same answer, i.e. that the Federal Commission had not yet decided on the appeal of the applicant's employer.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on Fundamental Rights in Labour Relations

25. The Law on Fundamental Rights in Labour Relations of the Socialist Federal Republic of Yugoslavia ("SFRY") (Official Gazette of SFRY, nos. 60/89 and 42/90) was taken over as a law of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" - no. 2/92). Article 23, paragraph 2 of the Law provides that:

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

Article 75 of the Law provides for the termination of a working relationship. Paragraph 2(3) of that Article reads as follows:

> "The working relationship ends without the consent of the employee, … if he or she stayed away from work for five consecutive days without good cause."

B. The Law on Labour Relations

26. The Decree with Force of Law on Labour Relations during the State of War or Immediate Threat of War (OG RBiH no. 21/92 of 23 November 1992) entered into force on the day of its publication. It was later confirmed by the Assembly of the Republic (OG RBiH no. 13/94 of 9 June 1994) and applied as the Law on Labour Relations. It remained in force until 5 November 1999. The Law contained the following relevant provisions:

> Article 10
>
> "An employee can be sent on unpaid leave due to his or her inability to come to work in the following cases:
>
> "If he or she lives or if his or her working place is on occupied territory or on territory where fighting is taking place.
>
> …
>
> "Unpaid leave can last until the termination of the circumstances mentioned above, if the employee demonstrates, within 15 days after the termination of these circumstances, that he or she was not able to come to work earlier. During the unpaid leave all rights and obligations of the employee under the employment are suspended.
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> Article 15
>
> "The employment is terminated, if, while under a compulsory work order, the employee stayed away from work for more than 20 consecutive working days without good cause, or if he or she took the side of the aggressor against the Republic of Bosnia and Herzegovina."

C. The Law on Labour

27. The Law on Labour (OG FBiH 43/99) entered into force on 5 November 1999. The Law was amended by the Law on Amendments to the Law on Labour (OG FBiH 32/00), with the particular effect that certain new provisions, including Articles 143a, 143b, and 143c, were added and entered into force on 7 September 2000.

28. Article 5 of the Law on Labour provides that:

> "(1) A person seeking employment, as well as a person who becomes employed, shall not be discriminated against based on race, colour, sex, language, religion, political or other opinion, ethnic or social origin, financial situation, birth or any other circumstance, membership or non-membership in a political party, membership or non-membership in a trade union, and physical or mental impairment in respect of recruitment, training, promotion, terms and conditions of employment, cancellation of the labour contract or other issues arising out of labour relations.
>
> "(2) Paragraph 1 of this Article shall not exclude the following differences:
>
> 1. which are made in good faith based upon requirements of particular a job;
>
> 2. which are made in good faith based on incapability of a person to perform tasks required for a particular job or to undertake training required, provided that the employer or person securing professional training has made reasonable efforts to adjust the job or the training which such person is on, or to provide suitable alternative employment or training, if possible;
>
> 3. activities that have as an objective the improvement of the position of persons who are in unfavourable economic, social, educational or physical position.
>
> "(3) In the case of breach of paragraphs 1 and 2 of this Article:
>
> 1. Persons whose rights are violated may submit a complaint before the competent court in relation to the infringement of their rights;
>
> 2. If the complainant presents obvious evidence of discrimination prohibited by this Article, the defendant is obliged to present evidence that such differential treatment was not made on discriminatory grounds;
>
> 3. If the court finds the complaint to be well-founded, it shall make such order as it deems necessary to ensure compliance with this article, including an order for employment, reinstatement, or the provision or restoration of any right arising from the contract of employment."

29. Article 143 of the Law on Labour provides that:

> "(1) An employee who is on the waiting list on the effective date of this law shall retain that status no longer than six months from the effective date of this law (5 May 2000), unless the employer invites the employee to work before the expiry of this deadline.
>
> "(2) An employee who was employed on 31 December 1991 and who, within three months from the effective date of this law (5 February 2000), addressed in written form or directly the employer for the purpose of establishing the legal and working status – and had not accepted employment from another employer during this period, shall also be considered an employee on the waiting list.
>
> "(3) While on the waiting list, the employee shall be entitled to compensation in the amount specified by the employer.

"(4) If a waiting list employee referred to in paragraphs 1 and 2 of this Article is not requested to return to work within the deadline referred to in paragraph 1 of this Article, his or her employment shall be terminated with a right to severance pay which shall be established according to the average monthly salary paid at the level of the Federation on the date of entry of this Law into force, as published by the Federal Statistics Institute.

"(5) The severance pay referred to in paragraph 4 of this Article shall be paid to the employee for the total length of service (experience) and shall be established on the basis of average salary referred to in paragraph 4 of this Article multiplied with the following coefficients:

Experience	Coefficient
- up to 5 years	1.33
- 5 to 10 years	2.00
- 10 to 20 years	2.66
- more than 20 years	3.00.

…

"(8) If the employee's employment is terminated in terms of paragraph 4 of this Article, the employer may not employ another employee with the same qualifications or educational background within one year except the person referred to in Paragraphs 1 and 2 of this Article if that person is unemployed."

30. Article 145 of the Law on Labour provides that:

"Proceedings to exercise and protect the rights of employees, which were instituted before this law has come into effect, shall be completed according to the regulations applicable on the territory of the Federation before the effective date of this law, if this is more favourable for the employees."

D. The Law on Amendments to the Law on Labour

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

"(1) An employee believing that his employer violated a right of his arising from paragraph 1 and 2 of Article 143, may within 90 days from the entry into force of the Law on Amendments to Labour Law, introduce a claim to the Cantonal Commission for Implementation of Article 143 of the Law on Labour (hereinafter the "Cantonal Commission"), established by the Cantonal Minister competent for Labour Affairs (hereinafter the "Cantonal Minister").

"(2) The Federal Commission for Implementation of Article 143 (hereinafter the "Federal Commission"), which is established by the Federal Minister, shall decide on the complaints against the procedural decisions of the Cantonal Commission.

"(3) In the case when the Cantonal Commission is not performing tasks for which it is established, the Federal Commission shall overtake the jurisdiction of the Cantonal Commission.

"(4) If a procedure pertaining to the rights of the employee under paragraph 1 and 2 of Article 143 has been instituted before a Court, this Court shall refer the case to the Cantonal Commission, and issue a decision on suspension of procedure."

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

"(1) Members of the Federal/Cantonal Commission shall be appointed by the Federal/ Cantonal Minister on the basis of their professional experience and demonstrated ability for performance of their function.

"(2) Members of the Commission have to be independent and objective and may not be elected officials or have any political mandate.

"(3) The Federal Ministry or competent organ of the Canton shall bear the expenses of the Federal/Cantonal Commission."

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

"The Federal/Cantonal Commission may:

1. hear the employee, employer, and their representatives;

2. summon witnesses and experts;

3. request appropriate authority organs and employers to submit all relevant information.

"Decisions of the Federal/Cantonal Commission shall be:

1. final and subject to the court's review in accordance with the law;

2. legally based;

3. transmitted to the applicant within 7 days."

34. The Law on Amendments to the Labour Law further added the following Articles 52, 53, and 54:

"Article 52

"This Law shall not affect contracts and payments done between an employer and his employee in the application of Article 143 of the Law on Labour prior to the date of entry into force of this Law (i.e. 7 September 2000).

"Article 53

"This Law shall not affect final decisions issued by the Court in the period prior to the entry into force of this Law (7 September 2000) in the application of Article 143 of the Law on Labour.

"Article 54

"Procedures of realisation and protection of employees' rights initiated prior to the entry into force of this Law shall be completed according to the regulations applicable on the territory of the Federation prior to the entry into force of this Law (7 September 2000), if it is more favourable to the employee, with the exception of Article 143 of the Law on Labour."

35. The Supreme Court of the Federation of Bosnia and Herzegovina, in its decision no. U-388/01, delivered on 12 December 2001, held that the decisions of the Cantonal Commission and Federal Commission do not have the legal nature of administrative acts. In its opinion, the Supreme Court stated that the Commissions are not organs that conduct proceedings under the laws regarding administrative proceedings, but they are *sui generis* bodies unique to the field of labour relations. Therefore, their final decisions are not subject to judicial review under regular administrative dispute procedures, which are limited to review of administrative acts. Extra-judicial remedies cannot be filed against the Commissions' decisions because they can only be filed

against effective judicial decisions. Commission decisions should, however, be subject to review by competent regular courts subject to the laws on civil procedure.

E. The Law on Civil Procedure

36. Article 420 of the Law on Civil Procedure (OG FBiH no. 53/03) stipulates that, in proceedings concerning labour relations, the court shall generally have regard to the urgency of such matters, especially in scheduling hearings and setting time limits.

V. COMPLAINTS

37. The applicant alleges a violation of her rights to work, income, and social insurance. She states that she lives in a very difficult financial situation because she is 60 years old and cannot easily find another job. She has 19 years of work experience and cannot yet retire. Her husband is a pensioner with a very low pension. Accordingly, she alleges that her right to life, i.e. her right to survive, is imperilled.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to admissibility

38. The respondent Party suggests that the Commission issue a decision in accordance with Paragraph 4 of Rule 46 of the former Chamber's Rules of Procedure, by which the Chamber refused to accept and examine an application if it did not meet the form and content requirements. With respect to admissibility, the respondent Party, in its observations dated 24 December 1999, emphasised that there was no standing to be sued because the Federation of Bosnia and Herzegovina Joint Services Unit is not the legal successor to the Joint Services Unit of the Republic of Bosnia and Herzegovina. The respondent Party further asserts that the Commission lacks competence *ratione temporis* because the applicant's labour relationship was terminated on 20 May 1992, before the entry into force of the Agreement. The respondent Party also suggests that the application be declared inadmissible under Article VIII(2)(a) of the Agreement for non-exhaustion of domestic remedies.

2. As to the merits

39. With respect to the merits, the Federation asserts that

> "the undisputed fact is, following the case file, that the applicant did not report for work after 1 May 1992, and there is no evidence that she was temporarily prevented from work, *i.e.* on sick leave, and she did not provide any other explanation. The respondent Party believes that there is no country in the world where such a behaviour would be tolerated by the employer. Therefore, the first and only reason why the labour relation of the applicant was terminated was her continuous absence from work longer than five days without justification. Having in mind the fact that the applicant did not apply within the time limit of fifteen days after the reintegration of the occupied part of Sarajevo, but applied only on 24 June 1996, it is indisputable that the conditions prescribed by law were met and the possibility to terminate the applicant's labour relation existed, even quite some time after the war stopped."

The Federation concludes that the applicant's employment was terminated under lawful conditions.

40. With respect to Article 6, the Federation asserts that “the applicant has not yet exhausted all domestic legal remedies, so there could not have been a violation of the right guaranteed by the quoted Article of the Convention”.

B. The applicant

41. The applicant states that her right to work and other rights arising from the right to work have been violated. Further, the applicant complains that, on 18 November 1996, the Court of First Instance I Sarajevo issued a judgement in her favour, but two months later the defendant lodged an appeal against the judgement although the time limit provided for appeals had expired. In her last observations of 18 December 2003, the applicant informed the Chamber that her case was still pending before the Federal Commission and that she had not yet received any severance pay.

VII. OPINION OF THE COMMISSION

A. Admissibility

42. Before considering the merits of the case the Commission must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII of the Agreement. In accordance with Article VIII(2) of the Agreement, “the Commission shall decide which applications to accept […]. In so doing, the Commission shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted […] (c) The Commission shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

1. Regarding the claim related to the termination of the applicant's employment

43. The Commission notes that the applicant complains of violations of her rights to work, income, and social insurance. These rights, however, are not included among the rights and freedoms guaranteed under the European Convention and its Protocols (case no. CH/02/9500, *Šabić*, decision on admissibility of 5 September 2002; case no. CH/98/1171, *Čuturić*, decision on admissibility and merits delivered on 8 October 1999, paragraph 38, Decisions August-December 1999). Such rights could be protected under the International Covenant on Economic, Social and Cultural Rights ("the ICESCR”). In accordance with Article II(2)(b) of the Agreement, however, the Commission only has jurisdiction to consider rights protected under the ICESCR in connection with alleged or apparent discrimination. The applicant has not alleged discrimination, nor did she state before the Municipal Court that she was the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement.

44. Therefore, pursuant to Article VIII(2)(c) of the Agreement, the Commission declares inadmissible as incompatible *ratione materiae* with the Agreement those parts of the application related to the termination of the applicant’s employment and related rights.

2. Regarding the claim of a violation of Article 6 of the Convention

45. The Commission notes that the applicant initiated court proceedings on 4 September 1996 in order to be reinstated into her pre-war position. To date she has not obtained final and binding decisions from the Court or the Federal Commission for Implementation of Article 143 of the Labour Law.

46. As to the length of the proceedings before the Court and the Federal Commission, the Commission observes the lack of activity by these organs in the case, which raises issues in

relation to the right to a fair hearing within a reasonable time. The Commission therefore declares this part of the application admissible.

B. Merits

47. Under Article XI of the Agreement, the Commission must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention.

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

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

1. Length of proceedings

49. The Commission notes that the applicant initiated court proceedings on 4 September 1996. The court of First Instance I Sarajevo issued a default judgement on 18 November 1996 because the employer failed to appear at the hearing without good reason. A judgement was issued in the applicant's favour. The Court annulled the decision on employment termination and ordered the defendant employer to reinstate the applicant. The defendant appealed against this judgement on 13 December 1996. The Court of First Instance I Sarajevo considered the appeal as a request for *restitutio in integrum* and allowed the defendant's request. On 21 December 2000 the Municipal Court I Sarajevo suspended the proceedings and referred the case to the Cantonal Commission for proceedings in accordance with Article 143 of the Law on Labour. The Cantonal Commission issued a procedural decision on 6 August 2001. The case is currently pending before the Federal Commission upon the employer's appeal, and no further action has been taken in the proceedings.

50. When assessing the length of proceedings for the purposes of Article 6, paragraph 1 of the Convention, the Commission must take into account, *inter alia*, the conduct of the applicant and the authorities and the matter at stake for the applicant (*see, e.g.,* case no. CH/99/1714, *Vanovac*, decision on admissibility and merits of 8 November 2002, paragraph 53, Decisions July-December 2002; Eur. Court HR, *Rajcevic v. Croatia*, judgment of 23 July 2002, paragraph 36). The issue in the applicant's case is whether her working relationship was terminated in accordance with law. The issues presented are not of a particularly complex nature. There is no indication that the length of the proceedings can be imputed to the applicant. Nor has the respondent Party provided any explanation from which it would appear that the delays should not be imputed to its authorities.

51. The failure to bring the proceedings to a conclusion within a reasonable time is further compounded by the fact that an employee who considers that her working relationship was wrongly terminated has an important personal interest in a speedy outcome of the dispute and in securing a final and binding decision, considering that her very livelihood depends on it. Domestic law requires that matters concerning employment are to be resolved as a matter of urgency.

52. Under the circumstances, the fact that the applicant's case was pending before the Municipal Court I in Sarajevo for more than four years (from 13 December 1996 until it was suspended on 21 December 2000) without any decision establishes a violation of the applicant's right to a fair hearing within a reasonable time under Article 6, paragraph 1 of the Convention.

53. The violation is compounded by the suspension of the applicant's case by the Court. Under the decision on suspension the case was referred to the Cantonal Commission, which issued its procedural decision on 6 August 2001. The case has since been pending before the Federal Commission in the appeal proceedings for more than two years. In the proceedings before the Cantonal and Federal Commissions, however, the applicant can only expect, at best,

the termination of her labour relation as of 5 May 2000 and payment of some compensation. Moreover, there is no telling how long the Federal Commission appeal proceedings might take. Under these circumstances, the Commission considers that the procedural decision of 21 December 2000 has caused further delay in the applicant's case.

54. The Commission therefore concludes, based on the length of proceedings, that the Federation of Bosnia and Herzegovina has violated the applicant's right to a hearing within a reasonable time under Article 6, paragraph 1 of the Convention.

2. Access to court

55. The Commission considers that the decision of the Municipal Court I of 21 December 2000 leaves the applicant with no access to court. The Cantonal and Federal Commission proceedings are, as the Supreme Court of the Federation of Bosnia and Herzegovina has held, *sui generis* extra-judicial proceedings (see paragraph 35 above). While her case is pending before the Federal Commission, the applicant has no expectation that her main complaint will be solved by the courts, but only that this case will be decided by the Cantonal i.e. Federal Commission employing a straightforward application of Article 143.

56. The Cantonal Commission can apparently only order a statutorily prescribed level of compensation, and it is not competent to order the applicant's reinstatement. The same is true of the Federal Commission, the venue for direct appeal of the Cantonal Commission's decision.

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

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

3. Conclusion

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

VIII. REMEDIES

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

61. The applicant requests reinstatement into her employment and benefits arising from her

employment.

62. The Commission has found violations of the applicant's right to a fair hearing within a reasonable time and her right to access to court as guaranteed by Article 6, paragraph 1 of the Convention. Therefore, the Commission considers it appropriate to order the respondent Party to take all necessary steps to issue a final and binding decision in the applicant's case within a reasonable time.

63. The Commission further finds it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to have her case decided before the ordinary courts and as a result of the delays before the Federal Commission for Implementation of Article 143 of the Labour Law.

64. Accordingly, the Commission will order the respondent Party to pay to the applicant, within one month of the date of receipt of this decision, the sum of 1000 Convertible Marks (*Konvertibilnih Maraka*) in recognition of her suffering as a result of her inability to have her case decided within a reasonable time by the courts and the Commission for Implementation of Article 143 of the Labour Law.

65. Additionally, the Commission further awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The interest shall be paid from the due date on the sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

66. For the above reasons, the Commission decides,

1. unanimously, to declare admissible under Article 6, paragraph 1 of the European Convention on Human Rights the part of the application relating to the length of the domestic proceedings in the applicant's case before the Municipal Court I in Sarajevo and the Federal Commission for Implementation of Article 143 of the Labour Law;

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

3. unanimously, that there has been a violation of the applicant's right to a fair hearing within a reasonable time under Article 6, paragraph 1 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that there has been a violation of the applicant's right to access to court under Article 6, paragraph 1 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps, through its organs, to ensure that a final and binding decision is issued in the applicant's case within a reasonable time;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, the total sum of 1000 Convertible Marks ("*Konvertibilnih Maraka*"), within one month of the date of receipt of this decision, as compensation for non-pecuniary damages;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of 10 (ten) per cent on the sum awarded to be paid to the applicant, such interest to

be paid from the due date on the sum awarded in conclusion no. 6 above or any unpaid portion thereof until the date of settlement in full; and

8. unanimously, to order the Federation of Bosnia and Herzegovina to submit to the Commission a report on the steps taken by it to comply with the above orders by 31 December 2004.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission