DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 November 2002)

Case no. CH/99/1714

Mladen VANOVAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 November 2002 with the following members present:

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

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

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

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

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He was employed by the public company PTT (hereinafter "PTT") at the Post Office at Dolac Malta in Sarajevo before the outbreak of the armed conflict. During the armed conflict, he was unable to report to work because his home and his place of work were controlled by armies on different sides of the armed conflict. After the end of the armed conflict he attempted to return to work. The applicant sought legal redress to regain his position and received a court judgement in his favour, but on appeal his court proceedings were suspended and his case referred to the Cantonal Commission for Implementation of Article 143 of the Labour Law (hereinafter "the Cantonal Commission").

2. The case raises issues with regard to the discrimination in the enjoyment of the right to work and related rights as guaranteed by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). The application also 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

3. The application was introduced on 11 March 1999 and registered on 12 March 1999. The applicant is represented by Mrs. Senija Poropat, a lawyer practising in Sarajevo.

4. On 22 May 2000, the Chamber transmitted the case to the respondent Party under Article II(2)(b) of the Agreement in conjunction with Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, as well as under Article 6 of the Convention. The Chamber received the respondent Party's observations on 24 July 2000, 12 April 2001, 29 October 2001, 9 January 2002, and 16 September 2002.

5. The applicant responded on 20 June 2000, 14 September 2000, 5 June 2001, 15 January 2001, 11 December 2001, and 22 July 2002.

6. The Chamber deliberated on the admissibility and merits of the case on 6 September 2002, 11 October 2002, and 4 November 2002. On the latter date it adopted the present decision on the merits.

III. FACTS

7. The applicant was employed with PTT and worked at the Post Office at Dolac Malta in Sarajevo. After the beginning of the armed conflict, the applicant could not go to work any longer because the area where he was living (Grbavica) was controlled by the Serb Army and the area where he had worked was controlled by the Army of the Republic of Bosnia and Herzegovina. He stopped reporting to work on 30 April 1992. The respondent party claims that he was engaged in military duties beginning 6 May 1992.

8. On 19 March 1996, Grbavica was reintegrated into the territory of the Federation of Bosnia and Herzegovina (hereinafter "the Federation"), and the applicant reported to work within fifteen days. On 4 September 1996, he received delivery of a procedural decision dated 23 May 1992. The decision stated that his employment had been terminated on 30 April 1992 by PTT in Sarajevo because he had been absent without leave for more than five consecutive days.

9. On 18 September 1996, the applicant filed an appeal against this procedural decision to the Steering Board of PTT. On 17 October 1996, PTT issued a final decision refusing the appeal as ill-founded and confirming the procedural decision terminating the applicant's employment.

10. On 30 October 1996, the applicant initiated a labour dispute before the Municipal Court II in Sarajevo. On 20 May 1998, the Municipal Court II decided to refuse the applicant's complaint.

11. On 16 June 1998, the applicant filed an appeal to the Cantonal Court in Sarajevo against the judgement of 20 May 1998. The Cantonal Court accepted the appeal on 7 April 1999. The Court then annulled the first instance judgement and returned the case to the Municipal Court II.

12. On 4 December 2000, the Municipal Court II issued a judgement by which it ordered reinstatement and compensation for the applicant.

> "The procedural decision of the Defendant (PTT Company Sarajevo) of 23 May 1992 and the decision of 17 October 1996 are annulled and the Defendant is obliged to reinstate the applicant and assign him to tasks corresponding to his education.
>
> "The Defendant is obliged to pay compensation of 9,807.45 KM to the applicant because he did not work during the period from 30 April 1996 until 30 September 2000.... As to the other part of the suit, related to the recognition of years of service and payment of pension insurance, this court declares itself absolutely incompetent and the suit is rejected.
>
> "The Defendant is obliged to pay expenses caused by this dispute in the amount of 135 KM...."

13. The applicant and the defendant appealed against this judgement on 11 January 2001 and 23 January 2001, respectively. On 26 October 2001, the Cantonal Court issued a procedural decision annulling the judgement, suspending the court proceedings, and referring the case to the Cantonal Commission for Implementation of Article 143 of the Labour Law. The case is currently registered and pending before the Cantonal Commission.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on Fundamental Rights in Labour Relations

14. 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

15. 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."

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

16. 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.

17. 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."

18. 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."

19. 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

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

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

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

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

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

21. 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."

22. 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."

23. 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."

24. 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

25. Article 426 of the Law on Civil Procedure (OG FBiH no. 42/98) 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

26. The applicant alleges a violation of his right to a fair hearing under Article 6 of the Convention. He further alleges that he has been discriminated against in the enjoyment of the right to work on the basis of his Serb origin and place of residence.

27. The applicant requests the Chamber to order the respondent Party to reinstate him to his pre-war employment, to compensate him for lost salary from 4 April 1996 until the date of his re-employment, to pay contributions for pension and health insurance, and to pay the costs of court proceedings.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to admissibility

28. With respect to admissibility, the Federation argued, in its observations dated 24 July 2000, that the applicant had not exhausted effective domestic remedies because, at the time those observations were submitted, the applicant's case remained pending before the Municipal Court II in Sarajevo.

2. As to the merits

29. With respect to the merits, the Federation asserts that the application is ill-founded and that the applicant could have reported to work at least until the state of war was introduced by the decision of the Presidency of the Federation of Bosnia and Herzegovina on 20 June 1992. The Federation further states that the applicant's employment was terminated under lawful conditions, that he was not discriminated against in his enjoyment of the right to work, and that his allegations in that regard are unsupported.

30. With respect to Article 6, the Federation asserts that it is a very complex case, that the length of proceedings has been reasonable, and that the courts have been impartial.

31. The Federation further asserts that the applicant's labour dispute can only be resolved according to Article 143 of the Labour Law. Regarding the applicant's distrust of the Cantonal Commission because "it never reinstated anyone into a labour relation or paid anyone compensation or a severance package as of today", the Federation asserts that these allegations are arbitrary and ill-founded. The Federation does not, however, highlight any case in which a person was reinstated by the Cantonal Commission.

B. The applicant

32. The applicant asserts: (1) that the court proceedings initiated on 30 October 1996 have been delayed with no end in sight; (2) that his case does not involve Article 143 of the Labour Law; (3) that PTT had needs for new workers, as confirmed by job vacancy announcements in *Dnevni avaz* on 2 and 7 July 1997; and (4) that the exclusive reason for his dismissal was discrimination.

VII. OPINION OF THE CHAMBER

A. Admissibility

1. Competence *ratione temporis*

33. Although the respondent Party did not specifically raise a *ratione temporis* objection to the application, the Chamber will address the issue of its competence in this regard. Although the respondent Party apparently considers the applicant's employment to have been effectively terminated on 23 May 1992, it concedes that this occurred by retroactive application of the decision of the PTT Steering Board taken on 17 October 1996, at which time the Chamber had jurisdiction. Additionally, authorities of the Federation subsequently applied Article 143 of the Law on Labour, under which the applicant's labour relations were terminated by force of law. The applicant initiated administrative and court proceedings against the termination of his employment. Accordingly, all acts complained of fall within the Chamber's competence *ratione temporis*.

2. Requirement to exhaust effective domestic remedies

34. The Federation argues that the applicant has not exhausted effective domestic remedies. The Chamber must consider whether, for the purpose of Article VIII(2)(a) of the Agreement, any "effective remedy" was available to the applicant in respect of his complaints and, if so, whether he has demonstrated that it has been exhausted. It is incumbent on the respondent Party arguing non-exhaustion to show that there was a remedy available to the applicant other than his application based on the Agreement and to satisfy the Chamber that the remedy was an effective one.

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

36. Regardless of whether the applicant's employment status was affected by the PTT decision of 23 May 1992, the labour relationship was terminated by force of law on 5 May 2000. The Law on Labour, in Article 143, terminates the working relations of all employees still on the waiting list on that date, without exception. Accordingly, the applicant has no remedy available that he could be required to exhaust to obtain a decision from the courts or the Commission allowing him to resume work.

37. In any case, the applicant has pursued his case through the domestic court system and even obtained a lower court judgement in his favour. On appeal, however, his court proceedings were suspended and his case referred to the Cantonal Commission. Under the circumstances, there are no additional effective domestic remedies that the applicant could be required to pursue.

38. The Chamber concludes that there are no effective domestic remedies for the applicant to obtain reinstatement. The application is therefore admissible in its entirety against the Federation of Bosnia and Herzegovina.

B. Merits

1. Discrimination in the enjoyment of the right to work and free choice of employment as guaranteed by Articles 6 and 7of the ICESCR

39. Under Article II of the Agreement, the Chamber has jurisdiction to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the sixteen international agreements listed in the Appendix to the Agreement 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.

40. The Chamber has repeatedly held that the prohibition of discrimination is a central objective of the Dayton Peace Agreement to which the Chamber must attach particular importance. Article II(2)(b) of the Agreement affords the Chamber jurisdiction to consider alleged or apparent discrimination on a wide range of grounds in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Agreement, including the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination (see case no. CH/01/7351, *Kraljević*, decision on admissibility and merits, delivered on 12 April 2002, paragraph 62).

41. Article 6(1) of the ICESCR, as far as relevant, reads as follows:

> "The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

42. Article 7 of the ICESCR, as far as relevant, reads as follows:

> "The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
>
> "(a) Remuneration which provides all workers, as a minimum, with:
>
> "(i) fair wages and equal remuneration for work of equal value without distinction of any kind, …
>
> "(ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant, …."

(a) Impugned acts and omissions

43. Acts and omissions possibly implicating the responsibility of the Federation under the Agreement include the failure to re-employ the applicant after the end of the armed conflict and the attempted hiring of others for a position the applicant previously held.

44. These acts affect the applicant's enjoyment of the rights guaranteed by Articles 6(1) and 7(a)(i) and (ii) of the ICESCR. The Chamber will therefore examine whether the Federation has secured protection of these rights without discrimination.

(b) Differential treatment and possible justification

45. The Chamber must first determine whether the applicant was treated differently from others in the same or similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship or proportionality between the means employed and the aim sought to be realised. The burden is on the respondent Party to justify otherwise prohibited differential treatment based on grounds explicitly enumerated in Article II(2)(b) of the Agreement (see case no. CH/99/2696, *Brkić*, decision on admissibility and merits of 8 October 2001, paragraph 71, Decisions July-December 2001).

46. The applicant asserts that his employment was terminated and that he was not re-employed solely because of his Serb origin. The respondent Party does not dispute that the applicant was employed by PTT but argues that his employment was lawfully terminated. The Federation claims that the employment was terminated by the procedural decision of 23 May 1992 because the applicant was absent from work for five consecutive days beginning 30 April 1992.

47. The Chamber notes that the employer's decision to terminate the applicant's employment was based on his unjustified absence from work for five consecutive days under the Law on Fundamental Rights in Labour Relations.

48. The applicant lived in Grbavica and was prevented from going to work during the war. The applicant did not communicate the reason for his absence during the armed conflict. His employer certainly knew, however, that he lived in an area where war conditions prevented his reporting to work, and there was no need to explain the situation. Moreover, the circumstances surrounding the armed conflict made any communications difficult.

49. The Chamber notes that, under the circumstances, persons of Serb origin living in Grbavica and employed in the Federation were generally unable to report to work during the armed conflict and were the persons most likely to suffer termination of their employment by operation of the statutes in

place at the time the applicant stopped reporting to work.[1] In light of all these considerations, the Chamber finds that the applicant has been subjected to differential treatment in comparison with persons of different ethnic origin. There is no evidence that the applicant's treatment was objectively justified by law either during or after the armed conflict. In this regard, the Chamber notes that the Municipal Court II in Sarajevo found no legal basis for the issuance of the procedural decision terminating the applicant's employment. The Chamber concludes therefore that the Federation authorities, through PTT, actively discriminated against the applicant due to his Serb origin. This violation had been corrected by the Municipal Court II, but was subsequently perpetuated by the Cantonal Court's procedural decision suspending the court proceedings.

50. The Chamber concludes that the applicant has been discriminated against in the enjoyment of his right to work, and to just and favourable conditions of work, as defined in Articles 6 and 7 of the ICESCR, the Federation thereby being 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 ICESCR.

2. Article 6 of the Convention

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

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

(a) Length of proceedings

52. The Chamber notes that the applicant initiated court proceedings on 30 October 1996 and, after successfully appealing the initial refusal of his complaint, received a favourable judgement from the Municipal Court II on 4 December 2000. On appeal, however, the Cantonal Court suspended the proceedings and referred the case to the Cantonal Commission on 26 October 2001 for proceedings in accordance with Article 143 of the Law on Labour. The case is currently registered and pending before the Commission, and no further action has been taken in the proceedings.

53. When assessing the length of proceedings for the purposes of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the conduct of the applicant and the authorities and the matter at stake for the applicant (*see* the above-mentioned *Brkić* decision, paragraph 85). The issue in the applicant's case is whether his working relationship was terminated in accordance with the 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 the judicial authorities of the respondent Party itself.

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

55. Under the circumstances, the fact that the applicant's case was pending for more than four years without any decision establishes a violation of the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1 of the Convention.

56. The violation is compounded by the suspension of the applicant's case by the Cantonal Court. The Municipal Court II established that the applicant was entitled to reinstatement and compensation. With the subsequent decision of the Cantonal Court, however, the applicant can only expect, at best, to realise a substantially reduced compensation in the proceedings before the Commission under Article 143. Moreover, there is no telling how long the Commission proceedings

[1] Subsequent legislation expressly prohibited the termination of the employment of persons who were unable to report to work because of hostilities (*see* paragraph 15, *supra*).

might take. As of March 2002, the Cantonal Commission in Sarajevo had decided only 1700 of 14,000 pending cases, which suggests that there is a potential for lengthy delay in resolution of individual cases before the Commission. Under these circumstances, the Chamber considers that the procedural decision of the Cantonal Court has caused further delay in the applicant's case.

57. The Chamber 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.

(b) Access to court

58. The Chamber considers that the decision of the Cantonal Court of 26 October 2001 leaves the applicant with no access to court. The Commission proceedings are, as the Supreme Court of the Federation of Bosnia and Herzegovina has held, *sui generis* extra-judicial proceedings (see paragraph 24, *supra*). While his case is pending before the Cantonal Commission, the applicant has no expectation that his main complaint will be solved by the courts, but only that this case will be decided by the Cantonal Commission employing a straightforward application of Article 143.

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

60. 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 his claim anew in Municipal Court. It appears, however, that the courts, following the law, could only uphold or repeat the referral of his case to the Cantonal Commission, and the applicant would have no prospect of reinstatement or determination of his discrimination claims. The existing system appears to place the applicant in an endless procedural loop, with no prospect of having his substantive claims heard by a court.

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

(c) Conclusion

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

3. Conclusion on the merits

63. The Chamber concludes that the applicant's rights as guaranteed under Article 6 of the Convention have been violated and that he has been discriminated against in the enjoyment of his rights under Articles 6(1) and 7(a) of the ICESCR.

VIII. REMEDIES

64. Under Article XI(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy the breaches that it has found.

65. The applicant requests the Chamber to order the respondent Party to reinstate him to his pre-war employment, to compensate him for lost salary from 4 April 1996 until the date of his re-employment, to pay contributions for his pension and health insurance, and to pay the costs of court proceedings.

66. The Chamber has found the Federation to be in breach of its obligations under the Agreement by discriminating against the applicant on the basis of national and ethnic origin in the enjoyment of his rights under Articles 6 and 7 of the ICESCR and by failing to secure his rights guaranteed by Article 6 of the Convention. Therefore, the Chamber finds it appropriate to order the applicant's reinstatement to his previous employment and to award the applicant pecuniary and non-pecuniary compensation.

67. The Chamber orders the Federation to undertake immediate steps to ensure that the applicant is no longer discriminated against in his right to work and to just and favourable conditions of work, and that he be offered the possibility of resuming his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position.

68. The Chamber finds it appropriate to award the applicant, by way of compensation, the sum of 15,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") to cover both pecuniary and non-pecuniary damages suffered during the period from 4 April 1996 through 30 November 2002, taking into account the decision of the Municipal Court II in Sarajevo.

69. The applicant shall also receive on the first day of each month 300 KM, starting on 1 December 2002, until he is offered the possibility to resume his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position. Additionally, the Chamber will award ten per cent interest per annum on the sums referred to in the preceding paragraphs and in this paragraph. This interest shall be paid as of the date of the expiry of the one-month period set for the implementation of this decision until the date of settlement in full.

IX. CONCLUSIONS

70. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. by 6 votes to 1, that the applicant has been discriminated against in the enjoyment of his right to work as guaranteed by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, in conjunction with Article II(2)(b) of the Human Rights Agreement, the Federation of Bosnia and Herzegovina thereby being in violation of Article I of the Agreement;

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

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

5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the applicant is immediately offered the possibility to resume his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position;

6. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the amount of 15,000 KM by way of compensation for

pecuniary and non-pecuniary damages suffered during the period from 4 April 1996 through 30 November 2002, taking into account the decision of the Municipal Court II in Sarajevo;

7. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay 300 KM to the applicant on the first day of each month, starting on 1 December 2002, until he is offered the possibility to resume his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position;

8. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay the applicant simple interest at a rate of 10 (ten) per cent per annum over the sums stated in conclusions nos. 6 and 7 or any unpaid portion thereof; and

9. unanimously, to order the Federation of Bosnia and Herzegovina to report to it not later than three months after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel