DECISION ON ADMISSIBILITY AND MERITS
(delivered on 4 July 2003)

Case no. CH/98/668

Ranko and Goran ĆEBIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 2 June 2003 with the following members present:

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

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

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

Recalling the Second Panel's decision of 11 October 2002 to strike out case no. CH/99/1518, *Ranko Ćebić v. the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina*;

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

I. INTRODUCTION

1. The application was brought before the Chamber by Ranko Ćebić in his own right and on behalf of his son, Goran Ćebić, in accordance with Article VIII(1) of the Agreement, which provides in relevant part that "the Chamber shall receive ... from any person ... acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights ..."[1].

2. Around 15 September 1996, Goran Ćebić disappeared from Sarajevo; he was officially registered as a missing person on 4 May 1998. Meanwhile, on 28 September 1996, an unidentified dead body was found in the River Bosna next to the Reljevo Bridge. After an autopsy was performed, the body was buried in the Municipal Cemetery of Visoko. On 22 June 2000, the corpse was exhumed and on 25 June 2000 officially identified as Goran Ćebić's body by the Commission for Tracing Missing and Detained Persons of the Republika Srpska ("the RS Commission").

3. Although his son suffered from a serious neurological disease (see paragraph 15 below), the applicant has, since the beginning of his search to discover the fate of his son, always maintained that he was killed and that his murder was covered up by the authorities of the Federation of Bosnia and Herzegovina ("the Federation"). He is convinced that the disappearance and death of Goran Ćebić are connected to the fact that his apartment in Sarajevo was re-allocated quickly after his disappearance. He argues that the authorities of the Federation purposely did not take the appropriate steps to locate the body of his son and later to investigate his death and find the perpetrators of what he insists must have been a murder. To date no physical evidence exists to support the applicant's theory.

4. The case raises issues under Article 2 (right to life) of the European Convention on Human Rights ("the Convention") in regard to the applicant's son Goran Ćebić. It further raises issues under Article 8 (right to respect for private and family life) of the Convention in regard to the applicant Ranko Ćebić himself.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was received on 1 June 1998 and registered on 9 June 1998.

6. On 16 October 1998, the Chamber transmitted the case to the Federation for its observations on the admissibility and merits. On 26 April 1999, the Federation submitted its observations on admissibility and merits. On 2 June 1999, the Chamber received the applicant's response to the Federation's observations.

7. Although the application was directed against Bosnia and Herzegovina as a respondent Party, the Chamber did not see any reason to transmit the application to it since none of the authorities of Bosnia and Herzegovina was involved in the facts complained of. Furthermore, Bosnia and Herzegovina has no competence for the issues raised in this application (see paragraph 67 below).

8. On 19 March 1999, the applicant submitted a claim for compensation. For his efforts to trace his son and his physical and mental pain and suffering caused by his continued anticipation of the truth about the fate of his son, he requested KM 20,000. As compensation for mental suffering for the loss of his only son, he requested KM 50,000. He later requested that the truth about his son's disappearance be established and that the perpetrators of his murder be punished appropriately.

9. The Federation submitted further observations on 15 June 2000, 28 June and 1 November 2002, and 19 February, 20 March and 1 April 2003.

10. As requested by the Chamber, on 19 and 27 March 2003, the Republika Srpska submitted

[1] Although Ranko and Goran Ćebić are both registered as applicants, the decision refers to Ranko Ćebić as "the applicant".

relevant documents issued by its authorities. Although the Chamber received such documentation from the Republika Srpska, the Republika Srpska is not a respondent Party in the current case.

11. The applicant submitted several letters and observations to the Chamber during the proceedings before the Chamber.

12. On 2 April 2003, the Chamber held a public hearing in the premises of the Sarajevo Cantonal Court. The applicant Ranko Ćebić was present and represented himself and his late son. The Federation was represented by Safija Kulovac and Mirsad Gačanin, assistants of the Secretary of the Office for Co-ordination with and Representation before the Human Rights Chamber. The following witnesses were heard: Milan Bogdanić, former President of the Sub-Committee of Srpsko Sarajevo of the Commission for Tracing Missing and Detained Persons of the Republika Srpska and currently employed by it; Mustafa Bisić, Cantonal Prosecutor in Sarajevo; Branko Šljivar, Deputy Cantonal Prosecutor in Sarajevo; Ilijas Dobrača, court medical expert; and Hajrudin Isaković, housing inspector.

13. On 16 October 1998, 13 May 2000, 8 October 2002, and 10 January, 6 March, 9 May and 2 June 2003, the Chamber considered the admissibility and merits of the application. On the latter date the Chamber adopted the present decision.

III. FACTS

A. Background facts and disappearance of Goran Ćebić

14. The applicant Ranko Ćebić alleged in his application that his son, Goran Ćebić, disappeared from his apartment in Sarajevo during the night between 14 and 15 September 1996.

15. Goran Ćebić was married to A.M. and had a daughter with her. Before the outbreak of the armed conflict, Goran Ćebić and his wife divorced. The daughter now lives with her mother. Goran Ćebić had had a number of problems with his neighbours, due to his chronic alcoholism and the anti-social behaviour associated with that disease. He also suffered from depression with suicidal tendencies. On 16 April 1982, while Goran Ćebić was doing his military service in Zagreb, a Military Medical Commission of the Yugoslav National Army ("JNA") issued a certificate concerning his mental health. The certificate states that Goran Ćebić was affected by a *neurosis nuclearis* illness (*i.e.*, phobic anxiety disorder, anxiety hysteria) before the beginning of his military service, and since his illness did not improve, the Commission ordered his release from military duty.

16. In 1994 Goran Ćebić was injured in a gas explosion in his apartment; the skin on his face and hands was burned. After this accident, he started to consume tranquillisers.

17. After the armed conflict, Goran Ćebić was involved in several fights, mainly with his neighbours. On 5 September 1996, he physically attacked one of his neighbours, who reported the incident to the Municipal Police and brought charges against him. According to his father, he was physically assaulted on a number of occasions by his neighbours because he played loud music late at night. Ranko Ćebić considered that the music was an excuse and that the violence was due to the fact that the neighbours accused his son of being a "chetnik".

18. At the time of the disappearance of Goran Ćebić, criminal proceedings were also outstanding against him relating to the theft of an electricity cable. Since he did not appear before the investigative judge on a number of occasions after September 1996, a warrant for his arrest was issued on 1 February 1997.

B. Proceedings concerning the applicant's apartment

19. The applicant had an occupancy right over an apartment located at Džamiljska St. 13/VII in Sarajevo. This apartment was owned by the City Development Institute – Sarajevo City ("the Institute"). The applicant's son Goran Ćebić started to reside alone in this apartment during the armed conflict. However, according to the information submitted to the Chamber, it seems that Goran Ćebić was often absent from the apartment, for example, when he visited his former girlfriend

in Croatia.

20. On 1 June 1996, the Administration for Housing Affairs of the Sarajevo City issued a decision declaring the apartment permanently abandoned. This decision became valid on 13 June 1996. Although the applicant recognised that his son was not always in the apartment, he alleged that his son was still living in the flat at that time. During the public hearing, Mr. Isaković explained that he has "to seal any apartment that is free of persons and abandoned. When [he] come[s] to an apartment, even today, [he] leave[s] a summons for the party and if the party does not appear within seven days, then [he] leave[s] another summons. The third time [he] seal[s] the apartment and put[s] a notice by the Cantonal housing administration." Therefore, the apartment could have been declared abandoned while Goran Ćebić was visiting his girlfriend in Croatia, as the applicant stated.

21. On 31 July 1996, the First Corps of the Army of the Republic of Bosnia and Herzegovina requested the Institute to allocate an apartment to N.B.

22. On 1 June 1997, the Institute issued a procedural decision allocating the apartment in question to N.B. The decision mentions that the apartment is empty and devastated. Since the apartment was damaged by a gas explosion (see paragraph 16 above), the new occupant invested a significant amount of money to make the apartment habitable. Due to this significant investment and because N.B.'s relatives are, allegedly, important and powerful people in the Federation, the applicant suspects him of having participated in the disappearance and death of his son in order to gain rights over the apartment.

23. On 30 September 1997, the applicant submitted a request for reinstatement into possession of the apartment to the Administration for Housing Affairs of Canton Sarajevo ("the Administration"). On 26 November 1997, the Administration rejected his request.

24. On 22 April 1998, based on the new Law on Cessation of Application of the Law on Abandoned Apartments, the applicant submitted a new request to the Administration. On 1 July 1998, the Administration issued a procedural decision confirming the applicant's occupancy right but also considering that the current user was legally occupying the apartment, leaving the final decision about reinstatement to the competent Cantonal organ. The applicant appealed against this procedural decision.

25. On 28 January 1999, the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant's occupancy right to the apartment.

26. On 13 September 1999, the Administration issued a new procedural decision that annulled the previous one, confirmed the applicant's occupancy right and stated that the current occupant was obliged to leave the apartment within 15 days.

27. On 4 May 2000, the applicant entered into possession of his pre-war apartment.

C. Proceedings concerning an unidentified body found in the River Bosna

28. On 28 September 1996, a dead body was discovered in the River Bosna next to the Reljevo Bridge, about 15 kilometres from Sarajevo. This body was registered as N.N. – the abbreviation for *nomen nescium*, *i.e.* unknown – since no elements were present with which to identify the body. Upon the request of the Higher Court in Sarajevo, on 29 September 1996, a court medical expert, Mr. Dobrača, performed the autopsy of the N.N. 522 RA body. He established that the cause of death was the cessation of blood circulation due to a sudden immersion in water (*i.e.* hydrocution). In the autopsy minutes the expert stated that the death was violent – *i.e.* not natural –, but he could not establish whether this unnatural death was due to a murder, a suicide, or an accident. He also stated that the body was alive at the moment of falling into the water and that no traces of injuries or violence were found. During the public hearing, Mr. Dobrača confirmed the findings of the autopsy and stated that the cause of death cannot be established clearly. According to him, when the body was found, it had been in the water for at least 72 hours. He recalled that the level of the River Bosna was high and the flow of the water was fast at this period of the year. He was, therefore, of the

opinion that the N.N. body probably did not fall into the water at the place where it was found, but most probably from somewhere upstream, closer to Sarajevo. He also stated that some minor injuries were found on the body, but these injuries were superficial and did not affect any vital organ or function and thus were not the cause of death. Therefore, the body did not show any sign of physical assault prior to the impact of immersion in the water. After the issuance of this autopsy, the N.N. body was buried in the Municipal Cemetery of Visoko.

29. On 23 March 1998, the Deputy Cantonal Prosecutor of Sarajevo requested the Sarajevo Cantonal Court to transmit to his office photo-documentation and the record of the autopsy of the body found in the River Bosna on 28 September 1996 next to the Reljevo Bridge.

30. On 10 September 1998, based on the documentation transmitted, the Deputy Cantonal Prosecutor of Sarajevo issued an official note stating that "according to the documents in the case-file, I [, the Deputy Cantonal Prosecutor,] state that no acts by a third person with elements of criminal activity are present" with respect to the N.N. 522 RA body.

D. Tracing proceedings concerning Goran Ćebić

31. On 4 February 1997, the applicant reported his son's disappearance to the Ministry of Interior of Sarajevo Canton in writing. He made the same report to the International Committee of the Red Cross, to the Office of the United Nations High Commissioner for Refugees, and to several other international organisations. In an unsigned "information" note dated 21 April 1997, the Tracing Division of the Ministry of Interior of Sarajevo Canton states that the alleged victim, *i.e.* Goran Ćebić, is believed to be living somewhere in Croatia, taking care of elderly persons.

32. On 4 May 1998, Goran Ćebić was officially registered as a missing person, when the applicant submitted a written "request to initiate the search for a missing person" to the Ministry of Interior of the Federation.

33. The applicant also submitted an application to the Human Rights Ombudsperson for Bosnia and Herzegovina concerning the same matter. On 2 July 1998, the Chamber contacted the Ombudsperson and was informed that the applicant had requested to withdraw his application before that organ so that an application could be submitted to the Chamber. On 1 February 1999, the Ombudsperson decided not to open an investigation.

34. On 17 January 2000, the applicant filed criminal charges at the Sarajevo Canton Ministry of Interior against two persons in relation to the disappearance and alleged murder of his son. He alleged that the "official organs [of the Federation] undertook a 'campaign' against [his] son" and that these two persons were involved in the disappearance of Goran Ćebić.

35. On 2 February 2000, the Criminal Police of Sarajevo Canton took a statement of Ranko Ćebić concerning the disappearance of his son. During his statement, Ranko Ćebić repeated his accusations against these two persons for the murder of his son and stated that they had also threatened him.

36. On the same day, the Criminal Police contacted Goran Ćebić's ex-wife and had a conversation with her. Her statement was officially registered. She said that Goran Ćebić probably disappeared around September 1996, since he did not contact their daughter after that period. She explained that Goran had been "under the influence of alcohol almost all the time" and that he "almost always showed signs of restlessness, nervousness, and low spirits", which she attributed to the combination of alcohol and tranquillisers. She further said that she did not know what had happened to him.

37. Based on the statement of Ranko Ćebić, the two accused persons were heard by the Criminal Police on 9 February and 22 February 2000.

38. On 21 February 2000, the Criminal Police took a telephonic statement of Goran's former girlfriend from Zagreb. She declared that she had been in a relationship with Goran Ćebić until September 1995 and that he had had serious difficulties accepting the end of their relationship. After September 1995, she had met Goran several times and had stayed in contact with him. She

stated that Goran Ćebić had drinking problems and that he used tranquillisers together with alcohol. She further explained that he had tried to commit suicide in the past while serving in the former JNA, and he had threatened this again in 1996 and had generally lost the will for living. She spoke with him for the last time on 12 September 1996. She finally declared that she does not think that "Goran had any enemy, and the reason for his disappearance could not be the apartment".

39. On 22 February 2000, the Criminal Police transmitted its files concerning the disappearance of Goran Ćebić to the Sarajevo Cantonal Prosecutor's Office.

40. According to the applicant's statement during the public hearing, sometime after May 1998, he contacted "his old friend", Mr. Zovko, then President of the Constitutional Court of Bosnia and Herzegovina to request his support to discover the fate of his son. The applicant stated that Mr. Zovko "sent him" to the Cantonal Prosecutor Office to meet with Mr. Čavka for assistance in establishing the facts of his son's disappearance. However, the Chamber has no further information on these allegations or on whether Mr. Zovko supported the applicant in any manner.

41. A few days after his visit with Mr. Čavka, on 7 or 8 March 2000, the applicant was called to the Cantonal Prosecutor's Office, where the authorities informed him that they thought they had found his son's body. During the public hearing, Mr. Šlijvar, Deputy Cantonal Prosecutor, explained that the case was "re-opened" due to several documents provided by the applicant and due to his insistence. The Prosecutor's Office presented to the applicant photographs of the N.N. body found in the River Bosna on 28 September 1996 next to the Reljevo Bridge. On that occasion, the applicant stated that he was almost sure that the dead body was his son. The applicant further explained at the public hearing that when he was called into the Office, he asked how they had found his son, and Mr. Čavka of the Cantonal Prosecutor's Office told him "that he started from the point when my son had disappeared, and he separated all the files of missing persons in that period at the Prosecutor's Office, so he selectively came to the conclusion that it [the N.N. 522 RA body] could be my son, which was also confirmed".

42. On 20 April 2000, upon the request of the applicant, the Sarajevo Cantonal Prosecutor's Office presented pictures taken in September 1996 of the N.N. 522 RA body to two neighbours of Goran Ćebić. The first neighbour stated that "he thinks that it is Ćebić Goran because he finds a likeness between the photos and Goran Ćebić, but because of major changes to the body due to the fact that it stayed in the water for many days, he cannot confirm it with certainty". The second neighbour said he "cannot state that it is Goran Ćebić since it is difficult to identify the body".

E. Proceedings concerning the exhumation of the body found in the River Bosna

43. As explained by Mr. Bogdanić during the public hearing, the applicant contacted the RS Commission on 8 March 2000. In his letter, the applicant opined that the authorities of the Federation knew fundamental elements about his son's fate but "until today nothing concrete has been said". Based on these suspicions, the applicant requested the RS Commission to undertake the exhumation and autopsy of the body corresponding to the pictures that were presented to him earlier that day or the day before in the Cantonal Prosecutor's Office. The RS Commission did not have direct territorial competence to exhume the body in question since it was buried within the territory of the Federation. However, because the applicant and his son were of Serb origin, the RS Commission had the possibility to undertake such actions pursuant to the joint exhumation process.[2]

[2] As the Chamber has already explained in the case *Selimović and others* (case nos. CH/01/8365 *et al.*, *Selimović and others*, decision on admissibility and merits of 3 March 2003, paragraph 125), the representatives of Bosnia and Herzegovina, the Federation, the Republika Srpska and the Office of the High Representative ("the OHR") established in 1996 the Rules for Exhumations and the Clearing of Unburied Mortal Remains. Together with the Banja Luka and Sarajevo Agreements (for more details on these Agreements, see *Selimović and others*, *op. cit.,* paragraphs 124 and following), these Rules prescribe a process that has become known as the Joint Exhumation Process, whereby the competent authorities of the interested Party initiate and conduct the exhumation of a gravesite on the territory of the Party controlling that area. The Party controlling the area provides security for the exhumation team. For example, for gravesites of Bosniak victims of the Srebrenica events, the competent authorities of the Federation initiate and conduct the exhumation of gravesites located on the territory of the Republika Srpska, with local police of the Republika Srpska providing security. Various international experts and authorities supervise and monitor the entire process. Although not

44. The applicant provided the RS Commission with *ante-mortem* information on his son and a sketch where his late son could possibly have been buried in the Municipal Cemetery of Visoko, which he learned about when the pictures of the N.N. 522 RA body were shown to him by an officer of the Sarajevo Cantonal Prosecutor's Office.

45. On 27 April 2000, a representative of the Federal Commission for Missing Persons informed the Sarajevo Cantonal Prosecutor's Office that they had met with Ranko Ćebić and promised to perform DNA analysis of the mortal remains of the N.N. body, buried in the Municipal Cemetery of Visoko, in order to determine whether it is the body of Goran Ćebić.

46. On 1 June 2000, the exhumation and identification of the body found in the River Bosna in 1996 was ordered upon the proposal of the RS Commission. Mr. Bogdanić stated that the exhumation was authorised by an investigative judge from the Zenica-Doboj Canton and the District Court of Sprsko Sarajevo "under the condition to rebury the body if the identification is not confirmed". On 22 June 2002, the exhumation was conducted by the RS Commission. According to the minutes of the exhumation, those present on the spot were an investigative judge of the First Instance Court of Srpsko Sarajevo, the Deputy Prosecutor of Srpsko Sarajevo, the forensic medical expert and four members of the RS Commission. Information contained in the report of the director of the Visoko Cemetery, combined with information given by Mr. Bogdanić during the public hearing, establish that representatives of the following organisations were also present at the exhumation: the Ministry of Interior of the Republika Srpska, the Investigative Judge's Office of the Zenica Cantonal Court, the Commission for Missing Persons of the Federation, the International Committee of the Red Cross, and the Office of the High Representative. Mr. Bogdanić has further explained that there were no specific reasons to undertake the exhumation only three weeks after the order was issued. He stated that exhumation processes were organised periodically and that the RS Commission was only trying to combine exhumations at the same cemetery at one time.

47. On 25 June 2000, a medical expert of the RS Commission issued a death certificate for Goran Ćebić. The identification was performed in the presence of the applicant.

48. After the exhumation and identification, Goran Ćebić's body was transported to the Sopotnica Monastery in Kopaci, the Republika Srpska, and buried in the family tomb, upon the request of Ranko Ćebić.

49. Meanwhile, on 7 June 2000, the Deputy Prosecutor of the Sarajevo Canton issued a "proposal" to the investigative judge of the Sarajevo Cantonal Court "for the determination of the exhumation and DNA analysis of an unidentified corpse by the Institute for Genetics of the Koševo Hospital Sarajevo", as the Institute for Genetics became equipped for DNA analysis in May 2000 (see paragraph 60 below). On 24 November 2000, an Investigative Judge of the Zenica Cantonal Court issued an "official note" stating that on the same day he had been informed by representatives of the Visoko Cemetery that the mortal remains buried in lot no. A-3 4/3 were considered to be those of the late Goran Ćebić.

F. Criminal proceedings initiated by the applicant

50. On 24 April 2002, the Cantonal Prosecutor rejected Ranko Ćebić's criminal complaint against another person whom he suspected of being the murderer of his son. After that Ranko Ćebić took over the criminal prosecution, and on 6 May 2002, he filed a request with the Sarajevo Cantonal Court to conduct an investigation against this person. On 24 July 2002, the Sarajevo Cantonal Court decided to open an investigation against him on the suspicion that he had murdered Goran Ćebić by four hits to the head using a hard object. To date these proceedings are still pending before the domestic authorities.

51. On 20 November 2002, the applicant brought criminal charges against his son's former girlfriend for abandonment of a helpless person, failure to render help, and fraud. In his charges, the

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stated in the texts of these Agreements, the joint exhumation process was intended to be utilised in the context of persons missing from the 1992-1995 armed conflict on the territory of Bosnia and Herzegovina.

applicant stated that Goran Ćebić told the accused on 12 September 1996 that "he knew what he has to do". Based on this, the applicant considers that the former girlfriend should have assumed that his son would commit suicide and should have prevented this. On 25 December 2002, the Office of the Cantonal Prosecutor in Sarajevo rejected these charges.

IV. RELEVANT LEGAL PROVISIONS

52. The Law on Criminal Procedure of the Federation (Official Gazette of the Federation of Bosnia and Herzegovina – "OG FBiH" – no. 43/98) provides in relevant parts as follows:

Article 41

"(1) Prosecution of criminal perpetrators is the basic right and basic duty of the competent prosecutor.
(2) The competent prosecutor has the following powers and duties concerning crimes which are automatically prosecuted:

1. to take the necessary steps to discover crimes and to identify the perpetrators and to guide preliminary criminal proceedings and supervise the activities of the law enforcement agencies pertaining to the identification of crimes and their perpetrators".

Article 56

"(1) When the competent prosecutor finds that there are not grounds to undertake prosecution of a crime which is automatically prosecuted or when he finds that there are no grounds to prosecute any of the reported accomplices, or when it is considered by this Law that he has withdrawn from prosecution, he must inform the injured party of this within a period of 8 days and instruct him that he may undertake prosecution himself. The same procedure shall also be followed by a court if it has rendered a decision to halt proceedings because the competent prosecutor has withdrawn from prosecution, or when by this Law it is considered that the competent prosecutor has withdrawn from prosecution.
(2) The injured party has the right to undertake or to resume prosecution within 8 days from the date of receipt of the notification referred to in paragraph 1 of this Article."

Article 59

"(1) The injured party as prosecutor shall have the same rights as the competent prosecutor, except those belonging to the competent prosecutor as an official of the government.
(2) In proceedings conducted on the petition of an injured party as prosecutor, up until the end of the main trial, the competent prosecutor has the right to undertake prosecution himself and to defend the charge."

Article 141

"1. Private citizens are entitled to report crimes which are automatically prosecuted, and they have a duty to do so in the case when failure to report crimes constitutes a crime of itself."

Article 142

"1. A report shall be filed with the competent prosecutor in writing or orally."

Article 143

"1. If there are grounds to suspect that a crime which is automatically prosecuted has been committed, law enforcement agencies must take the steps necessary to locate the perpetrator of the crime, to prevent the perpetrator or accomplice from hiding or fleeing, to detect and secure the clues to the crime and articles which might serve as evidence, and to gather all information which might be of use to effective conduct of criminal proceedings."

Article 147

"When the perpetrator of a crime is unknown, the competent prosecutor may request that certain investigative actions be taken by the investigative judge, or if an autopsy or exhumation of a corpse should be done, he shall propose the taking of that action to the

investigative judge. If the investigative judge does not agree with that proposal, he shall ask the panel of judges to decide on the issue (Article 21 paragraph 6)."

Article 247

"1. The examination and autopsy of a corpse shall be undertaken in any case of death when there is suspicion or when it is obvious that the death was caused by a crime or is related to the commission of a crime. If the corpse has already been buried, then the exhumation shall be ordered for purposes of its examination and autopsy.

2. In the autopsy the necessary steps shall be taken to establish the identity of the corpse, and data concerning the external and internal physical peculiarities of the corpse shall be specifically described for that purpose."

V. COMPLAINTS

53. The applicant complains that in spite of his numerous requests to national and international authorities, his son's disappearance during the night between 14 and 15 September 1996 was not clarified until March 2000, and the circumstances of his death still have not been determined to date. He further complains about the reallocation to another person of his pre-war apartment, which was occupied by his son before he disappeared. During the public hearing, the applicant alleged that "his son was murdered in Sarajevo, transported to Reljevo and thrown from the Bridge into the water". Therefore, he requested the Chamber to declare the respondent Party responsible for the premeditated concealment of the crime [of the murder of his son] for more than four years by the Ministry of Interior of the Sarajevo Canton, and to condemn for negligence and irresponsibility the Cantonal Prosecutor's Office in Sarajevo".

54. Mr. Ranko Ćebić believes that the disappearance and death of his son, in combination with the declaration that his apartment was abandoned while his son was still alive and its re-allocation shortly thereafter to another person under "suspect circumstances" can only be explained by a conspiracy and collusion among the authorities of the Federation to protect the murderer(s) of his son. He further claims that the authorities of the Federation concealed from him for four years the fact that an unidentified male body had been found in the River Bosna at approximately the time when his son disappeared; therefore, he concludes that the authorities intentionally kept this information secret in order to protect someone.

55. From the application and later correspondence, it can be concluded that the applicant complains that the rights of his late son Goran Ćebić protected by Article 2 of the Convention have been violated. In addition, Ranko Ćebić alleges violations of his rights guaranteed by Article 8 of the Convention. The applicant also complains about the allocation of his pre-war apartment to a third party. This would, in principle, raise issues under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

56. In its observations of 26 April 1999, the Federation considers, regarding the admissibility of the application, that it should be declared inadmissible for non-exhaustion of domestic remedies.

57. According to the respondent Party, the applicant had the following possible remedies:

- Under the Law on Extra-Judicial Procedure (OG FBiH no. 2/98): Articles 18, 25, 27, 64 and 68;
- Under the Law on Criminal Procedure (OG FBiH no. 43/98): Articles 56, 141 and 142.

58. The respondent Party did not elaborate any further on the remedies listed.

59. Considering the merits of the case, the Federation opines that the application is ill-founded. Regarding Article 2 of the Convention, it states that its organs and institutions did not contribute to the alleged situation, and consequently, no violation of Article 2 has occurred. Further, the Federation maintains that there has been no violation of Article 8 of the Convention, since the alleged victim abandoned the apartment and the authorities did not contribute to this in any way.

60. The respondent Party, in its additional observations of 1 November 2002, alleges that the identification of the body found in the River Bosna could not have been performed earlier because Bosnia and Herzegovina did not have the technical means to establish such identity. DNA analysis was only enabled in Bosnia and Herzegovina in May 2000. As soon as the Genetics Institute in Sarajevo received the equipment for DNA analysis, the Cantonal Prosecutor suggested to the investigative judge that the exhumation and DNA analysis of the found body be performed. The respondent Party also alleges that the body could not be identified on the basis of its external characteristics.

61. Concerning the applicant's request for compensation, the Federation is of the opinion that the claim for monetary relief for efforts to trace his son is ill-founded and in any case over-estimated. Regarding the disappearance, the respondent Party also considers the claim ill-founded and over-estimated, since the Federation's responsibility for this has not been demonstrated.

B. The applicant

62. In his correspondence with the Chamber, the applicant persistently alleges that his son was deliberately killed. He bases this allegation on circumstantial evidence, including:

- the alleged unwillingness and uncooperativeness of the judge investigating the criminal charges against his son; and
- the fact that another person was permanently allocated his son's apartment very soon after his disappearance and then spent 15,000 KM repairing it. The applicant concludes that nobody would be willing to invest so much money in an apartment unless he was sure that he would remain in possession of it for some time. The applicant considers the fact that the new occupancy right holder is a relative of two active politicians in the Canton and the Federation to be a possible explanation for this quick re-allocation of the apartment and even for the disappearance of his son.

63. In his submission of 2 June 1999, the applicant argues that he had discussed the possible domestic remedies with several distinguished lawyers and also with the President of the Constitutional Court of Bosnia and Herzegovina. The applicant had been told by all of them that an eventual lawsuit instituted by him would be rejected as ill-founded. In spite of this, the applicant requested that his lawyer file a lawsuit against those whom he regards as suspects for the murder of his son, but the lawyer refused to do so when he heard the names of the suspects. Therefore, the applicant contends that he has no available effective legal remedies.

64. In a letter received on 14 March 2000, the applicant maintains his claim regarding the absence of actions taken by the Federation to inquire into his son's death, and he alleges that the medical expert from the RS Commission has established that his son's death was caused by four hits to the head by a hard object. However, the report of the medical expert was never provided to the Chamber.

VII. OPINION OF THE CHAMBER

A. Admissibility

65. 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.

1. As against Bosnia and Herzegovina

66. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition".

67. The applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the Chamber on its own motion find any such evidence. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina. The Chamber therefore declares the application inadmissible as against Bosnia and Herzegovina.

2. As against the Federation of Bosnia and Herzegovina

68. Under Article VIII(2)(a) of the Agreement, the Chamber shall consider whether effective remedies exist and the applicant has demonstrated that they have been exhausted.

69. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights (the "European Court") has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The European Court has, moreover, considered that 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 of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants. In previous cases the Chamber has held that the burden of proof is on the respondent Party to satisfy the Chamber that there was a remedy available to the applicant both in theory and in practice (*see, e.g.*, case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions March 1996-December 1997).

70. In its observations of 2 June 1999, the respondent Party claims that the application is inadmissible for non-exhaustion of domestic remedies. However, the Chamber notes that the Federation did not substantiate in any detail its allegation of non-exhaustion of domestic remedies. Rather, it merely listed some possible remedies without explaining how they could have been relevant for the applicant in the particular circumstances of the case. Furthermore, considering all the domestic and international authorities that Ranko Ćebić has addressed and the different legal actions that he took, the Chamber considers that the applicant has exhausted the domestic remedies accessible to him, within the meaning of Article VIII(2)(a) of the Agreement.

3. Regarding the claim related to the pre-war apartment

71. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept. ... In so doing, the Chamber shall take into account the following criteria: ... (b) The Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement."

72. In his application, the applicant complains that his pre-war apartment was declared permanently abandoned and allocated to another person in 1996. However, the Chamber notes that the applicant raised this issue before the Chamber in another application filed on 29 January 1999, registered as case no. CH/99/1518. On 11 October 2002, the Chamber adopted a decision to strike out that application on the ground that the matter complained of had been resolved, since Ranko Ćebić had entered into possession of his pre-war apartment on 4 May 2000. It follows that the matter has already been examined by the Chamber, within the meaning of Article VIII(2)(b) of the Agreement. Therefore, the Chamber decides to declare inadmissible the part of the application related to the applicant's pre-war apartment.

4. Conclusion as to admissibility

73. The Chamber finds that no other grounds for declaring the case inadmissible have been established. Accordingly, the Chamber declares admissible the part of the application related to the alleged violations of Article 2 of the Convention in respect of Goran Ćebić and Article 8 of the Convention in respect of the applicant, as against the Federation. The Chamber declares inadmissible the remainder of the applicant's complaints.

B. Merits

74. Under Article XI of the Agreement the Chamber must next address the question of whether this case discloses a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention.

1. Article 2 of the Convention (right to life) in regard to Goran Ćebić

75. The relevant part of Article 2 of the Convention reads as follows:

> "(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. [...]"

76. As the Chamber has stated in its decision in *E.M. and Š.T.* (case no. CH/01/6979, decision on admissibility and merits delivered on 8 March 2002, paragraphs 50 and 51), the European Court has ruled "that the first sentence of Article 2 paragraph 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction" (see Eur. Court HR, *L.C.B. v. United Kingdom*, judgment of 9 June 1998, Reports of Judgments and Decisions 1998-III, p. 1403, paragraph 36). The State's obligation in this respect requires it to put in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions" (see Eur. Court HR, *Osman v. United Kingdom,* judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, p. 3159, paragraph 115). It requires, *inter alia*, that there should be "some form of effective official investigation when individuals have been killed as a result of the use of force" (see, *e.g.*, Eur. Court HR, *McKerr v. United Kingdom*, judgment of 4 May 2001, paragraph 111). The essential purpose of such investigation "is to secure the effective implementation of the domestic laws which protect the right to life" (*id.*). The investigation must be effective in the sense that it is capable of leading "[...] to the identification and punishment of those responsible," this being not an obligation of "result but of means" (*id.,* paragraph 113). In examining whether these obligations under Article 2 have been complied with, the European Court has taken into account not only the adequacy of the police investigation, but also the actions of the prosecuting authorities and the courts in relevant criminal proceedings (see, *e.g.*, *id.,* paragraphs 130-136).

77. Furthermore, the Chamber recalls that the positive obligation to carry out an effective investigation is not confined to cases where the implication of State agents has been established (see, *e.g.*, Eur. Court HR, *Yasa v. Turkey,* judgment of 2 September 1998, Reports of Judgments and Decisions 1998-VI, paragraph 100). Also in accordance with the jurisprudence of the European Commission of Human Rights in *Dujardin v. France* (Eur. Commission HR, No. 16734/90, decision of 2 September 1991, Decisions and Reports 72, p. 236), there is a positive obligation for the State to prosecute those who harm life under Article 2 of the Convention.

78. Having considered this constant case-law, the Chamber finds that the absence of established responsibility of the Federation or its agents in the disappearance and death of Goran Ćebić does not exclude the respondent Party from its positive obligation to carry out an effective investigation to protect the right to life as guaranteed by Article 2 of the Convention.

79. In the present case the applicant essentially complains that the authorities of the Federation failed to identify the corpse of his son for almost 4 years, and then they failed to establish precisely the circumstances of his death and to prosecute his killer, if necessary. The Chamber will therefore consider whether the above-mentioned procedural requirements under Article 2 of the Convention were complied with in the proceedings in question.

80. In commencing the application of these legal principles to the present case, the Chamber must highlight that the safeguards of Article 2 of the Convention are triggered "when individuals have been killed as a result of the use of force". Thus, the question for the Chamber is whether the authorities of the respondent Party took sufficient steps to establish whether Goran Ćebić was killed by the use of force, and if he was, whether they performed the necessary procedures to satisfy their positive obligations. Moreover, as the obligation is one of conduct rather than of result, it is possible for the authorities to satisfy their positive obligations under the Convention without in fact concretely establishing the facts and circumstances of the individual's death. Although tragic and painful for the families, the Chamber recognises that not every death can be precisely explained.

81. Concerning the body found in the River Bosna in September 1996, the autopsy of the corpse performed by the court medical expert determined that the circumstances of the cause of death could not be clearly established. The medical expert considered that the unnatural death, which was caused by hydrocution, could have occurred due to an accident, a murder, or a suicide (see paragraph 28 above). The Chamber notes, however, that on 10 September 1998, the Deputy Cantonal Prosecutor, after having considered the relevant documents concerning this unknown body, concluded in an official note that the cause of death did not involve criminal activity (see paragraph 30 above).

82. Considering the disappearance and fate of Goran Ćebić, the Chamber notes that Goran Ćebić was officially registered as a missing person only on 4 May 1998. In 2000, the Sarajevo Cantonal Prosecutor's Office took several testimonies of witnesses and carried out diverse acts of investigation without being able to clarify whether or not Goran Ćebić was killed, as insisted upon by his father, or died accidentally, as some circumstantial evidence in the case file seems to support. The Chamber further recalls that the proceedings are still pending before the domestic authorities. In March 2000, in part due to the insistence of the applicant and perhaps due to the alleged intervention of the then President of the Constitutional Court, the authorities of the Federation finally compared their files and made a connection between the N.N. 522 RA body and the disappearance of Goran Ćebić. The Office of the Cantonal Prosecutor contacted Mr. Ranko Ćebić on 7 or 8 March 2000 to present him with pictures of the N.N. body found on 28 September 1996, thereafter leading to the identification of his missing son.

83. The Chamber notes that no appropriate explanation was given by the respondent Party as to why it took more than 3 years for the Office of the Cantonal Prosecutor to establish a possible link between the disappearance of Goran Ćebić and the body found in the River Bosna in September 1996 — from 4 February 1997, when the applicant first reported his son missing, until March 2000. This is so, even if the 3-month delay by the applicant in first reporting the disappearance of his son could have contribute to the authorities' difficulty in establishing the link. The Chamber can only conclude that the investigation undertaken by the authorities of the Federation was less than diligent. Moreover, the Chamber observes an apparent communication problem between the different administrations of the Federation in charge of this case.

84. None the less, the Chamber recalls that to engage the responsibility of the respondent Party under the positive obligations of Article 2 of the Convention, and to impose upon it an obligation to investigate, the use of force must be established. In the present case, the Chamber considers that the circumstances of the death of Goran Ćebić remain unclear, despite the fact that the authorities undertook the basic investigations required by the domestic law. The Chamber further stresses that Goran Ćebić was affected by a serious neurological disease and that he had exhibited suicidal tendencies; therefore, the likelihood of an accident or suicide cannot be reasonably excluded as the possible cause of his death.

85. The Chamber acknowledges that the authorities of the Federation can be seen as having lacked a degree of efficiency in the investigation concerning the disappearance and fate of Goran Ćebić. However, the Chamber recalls that Article 2 of the Convention does not impose upon the

respondent Party an obligation of result but only an obligation of conduct. Taking into consideration the delay in officially registering Goran Ćebić as a missing person, the lack of certainty over the cause of his death, and the lack of any physical evidence indicating the presence of any criminal activity in his death, the Chamber considers that the authorities of the Federation carried out the minimum investigations necessary, in the special circumstances of this specific case, to satisfy the positive obligations of Article 2 of the Convention. Therefore, the Chamber concludes that the Federation did not violate Goran Ćebić's rights as guaranteed by Article 2 of the Convention.

2. Article 8 of the Convention (right to respect for private and family life — *i.e.*, right to access to Information) – in regard to Ranko Ćebić

86. Article 8 of the European Convention provides, in relevant part, as follows:

> "Every one has the right to respect for his private and family life.
> [...]
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

87. In its previous case law, the Chamber has recognised the right of family members of missing persons to access to information about their missing loved ones. The Chamber considered "that information concerning the fate and whereabouts of a family member falls within the ambit of 'the right to respect for his private and family life', protected by Article 8 of the Convention" (see case no. CH/99/2150, *Unković,* decision on review of 6 May 2002, paragraph 126, Decisions January—June 2002; case nos. CH/01/8365 *et al. Selimović and others*, decision on admissibility and merits of 3 March 2003, paragraph 174).

88. In its *Avdo and Esma Palić* decision, the Chamber considered that the respondent Party had engaged in "arbitrarily withholding from [Mrs. Palić] information, which must be in its possession, concerning the fate of her husband, including information concerning her husband's body, if he is no longer alive. It follows that the respondent Party has violated her right to respect for her family life under Article 8 of the Convention" (case no. CH/99/3196, decision on admissibility and merits delivered on 11 January 2001, paragraph 84, Decisions January-June 2001).

89. Therefore, the Chamber has established a right, derived from Article 8 of the Convention, for the relatives of missing persons to be informed of their fate and whereabouts when the respondent Party or its authorities were involved in their disappearances.

90. The Chamber also recalls that the European Court considers that "the Convention is a living instrument which must be interpreted in the light of the present-day conditions" (Eur. Court HR, *Mazurek v. France*, judgment of 1 February 2000, Reports of Judgments and Decisions 2000-II, paragraph 49; *see also* Eur. Court HR, *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, paragraph 58). Applying this approach, the European Court in the *Marckx v. Belgium* case utilised the Convention to accelerate the evolution of the law by finding a violation of Article 14 in conjunction with Article 8 of the Convention (*id.* at paragraph 58 (regarding inheritance rights)). Ultimately, the European Court has defined the general principle that Article 8 of the Convention creates a positive obligation toward the State when "a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life" is established (Eur. Court HR, *Botta v. Italy*, judgment of 24 February 1998, Reports of Judgments and Decisions 1998-I, paragraph 34).

91. Having this in mind, the Chamber is of the opinion that Article 8 of the Convention should be interpreted also to impose upon the authorities the positive obligation to affirmatively seek, collect, and investigate information on the fate and whereabouts of missing persons within their jurisdiction, when properly requested to do so by their family members, and then, to share such information with the family members in a timely manner and in good faith. This is so even when the missing persons

disappeared without any involvement of the authorities and in the absence of any evidence of criminal activity. Accordingly, in the Chamber's view, if the authorities withhold, purposefully fail to collect, or negligently fail to analyse and disclose information on the fate and whereabouts of missing persons to their family members, who are actively seeking such information, the authorities may be in breach of their positive obligations due under Article 8 of the Convention. Therefore, the Chamber shall consider whether the respondent Party acted in good faith in responding to the complaints initiated by Ranko Ćebić to attempt to clarify the fate of his missing son.

92. In the Chamber's view, the Federation failed to timely inform the applicant about the fate of his son, whose unidentified corpse was found on 28 September 1996 and only formally identified as the late Goran Ćebić on 25 June 2000. Furthermore, the Chamber recalls that the applicant was misled by the authorities of the respondent Party, when, after Goran Ćebić was reported missing, the Ministry of Interior of the Sarajevo Canton officially informed him that his son was believed to be living in Croatia (see paragraph 31 above). Although the Chamber is aware that this information could have been provided by the Croatian authorities, such false information should have been verified by the authorities of the respondent Party, considering the impact it would have on the applicant, who was actively searching for the truth concerning his son's disappearance.

93. Next, the Chamber considers the particular circumstances, such as the place and the period, of the disappearance. The Chamber notes that Goran Ćebić disappeared in September 1996 during peacetime, almost one year after the entry into force of the General Framework Agreement, in Sarajevo or a suburb. At this time, the respondent Party had a functioning administration and full control over Sarajevo and its region. Furthermore, Sarajevo and its surrounding area is not a geographically large area and not many disappearances occurred during that time. None the less, it still took almost 4 years for the authorities of the Federation to make the link between the disappearance of Goran Ćebić and the unidentified body found at the end of September 1996 in the River Bosna. As stated above, this delay indicates a lack of diligence on the part of the authorities.

94. Due to the request of the applicant, the ultimate exhumation and identification of the body was performed by the RS Commission, although the authorities of the Republika Srpska had no competence, whatsoever, to apply the joint exhumation process to persons who disappeared after the end of the armed conflict. This seemed to be due to the fact that the authorities of the Federation did not act in time. Only on 7 June 2000, *i.e.* after the exhumation had already been ordered by the authorities of the Republika Srpska, did the Deputy Prosecutor of the Sarajevo Canton propose to the investigative judge the exhumation and DNA analysis of the body (see paragraph 49 above).

95. The Chamber finally recalls that in its jurisprudence the criteria related to Article 8 of the Convention take into account the psychological element of the absence of information on the applicant (see *Selimović*, *op. cit.*, paragraph 180). The Chamber therefore takes particular note of the emotional impact of the absence of information concerning the fate of Goran Ćebić between September 1996 and June 2000 on the life of his father. As Ranko Ćebić had earlier lost his wife, he has repeatedly emphasised that he is now alone in the world and was thus desperate to clarify the fate and whereabouts of his only son. The Chamber also notes that to date, the circumstances of Goran Ćebić's death have not been officially established, although the father continues to insist, with no supporting evidence, that some element of foul play must have been present in his death.

96. In such circumstances, the failure of the authorities of the Federation to act in a diligent and efficient manner – between 4 February 1997, when Goran Ćebić was reported as a missing person, and June 2000, when the body was finally exhumed and identified by the RS Commission – cannot be considered to be in good faith. Such bad faith includes the failure of the authorities of the Federation to respond to the complaints and pleas of the applicant and to clarify the fate and whereabouts of his son. It further applies to their provision of false and misleading information to the applicant and their failure to make known to him any available credible information about his son's disappearance.

97. Therefore, the Chamber concludes that the respondent Party has breached its positive obligations to secure respect for the applicant's rights protected by Article 8 of the Convention.

VIII. REMEDIES

98. Under Article XI(1)(b) of the Agreement the Chamber must next address the question of what steps shall be taken by the respondent Party to remedy breaches of the Agreement which it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.

99. The applicant requested as compensation for pecuniary and non-pecuniary damages the sum of KM 70,000 in total. He further requested that the respondent Party properly inquire into what he considers the murder of his son and to condemn the perpetrators of such crime (see paragraph 8 above).

100. As explained above, the Chamber has found that the respondent Party violated Ranko Ćebić's right to access to information about the fate of his son, as guaranteed by Article 8 of the Convention.

101. Therefore, the Chamber considers it appropriate to award a sum to the applicant in recognition of his mental suffering as a result of his inability to receive information concerning his late son from the respondent Party in a timely and diligent manner. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 5,000 Convertible Marks (*Konvertibilnih Maraka*) in recognition of his mental suffering 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.

102. The Chamber further awards simple interest at an annual rate of 10% as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

103. Since the Chamber has not found a violation of Goran Ćebić's rights protected by Article 2 of the Convention, it will not order the authorities of the Federation to conduct any further investigations. The Chamber, therefore, will dismiss the remainder of the applicant's requests for remedies.

IX. CONCLUSIONS

104. For the reasons given above, the Chamber decides:

1. unanimously, to declare inadmissible the application insofar as it is directed against Bosnia and Herzegovina;

2. by 4 votes to 3, to declare admissible the part of the application related to the alleged violations of Article 2 of the European Convention on Human Rights in respect of Goran Ćebić and Article 8 of the European Convention on Human Rights in respect of Ranko Ćebić, as against the Federation of Bosnia and Herzegovina;

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

4. by 6 votes to 1, that there has been no violation of the positive obligations due to Goran Ćebić under Article 2 of the European Convention on Human Rights;

5. by 4 votes to 3, that there has been a violation of Ranko Ćebić's right to access to information about the fate of his son under Article 8 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;

6. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina to pay to Ranko Ćebić, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of five thousand (5000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for his mental suffering;

7. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full;

8. unanimously, to dismiss the remaining requests for remedies; and

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

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel

Annex I: Dissenting opinion of Mr. Giovanni Grasso, joined by Messrs. Mato Tadić and Jakob Möller

ANNEX I

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Giovanni Grasso, joined by Messrs. Mato Tadić and Jakob Möller.

DISSENTING OPINION OF MR. GIOVANNI GRASSO, JOINED BY MESSRS. MATO TADIĆ AND JAKOB MÖLLER

1. I cannot agree with conclusion no. 5 of the decision on admissibility and merits of the Chamber finding a violation of Article 8 of the European Convention by the Federation of Bosnia and Herzegovina. In my opinion such a conclusion is incorrect in the assessment of the facts; wrong in its legal premises in the evaluation of the system of the European Convention and of its own case-law; and contradictory in its result.

2. As for the evaluation of the facts, the Chamber concluded that "the failure of the authorities of the Federation to act in a diligent and efficient manner … cannot be considered to be in good faith" (see paragraph 96 of the decision above). In my opinion nothing proves that the Federation was not acting in good faith. On the contrary, the Chamber did not give sufficient importance to the fact that Mr. Ranko Ćebić reported the disappearance of his son only in February 1997, with several months of delay; such a fact has surely contributed to the difficulties of the authorities to draw a link between the disappearance of Mr. Goran Ćebić and the body found earlier in the River Bosna. Furthermore, the Chamber did not consider in an appropriate way all the elements indicating that the death of Goran Ćebić was a suicide (as also admitted by his father in the criminal charges brought on 20 November 2002 against his son's former girlfriend; see paragraph 51 of the decision above).

3. The Chamber in this decision diverted, without sufficient reasons, from its previous case-law in which the Chamber has recognised a right to access to information by a relative of a missing person in relation to the fate and whereabouts of his (or her) missing family member, but only and exclusively in relation to information *which the respondent Party already has in its possession* (see case no. CH/99/2150, *Unković*, decision on review delivered on 10 May 2002, paragraphs 120–127; see also case no. CH/99/3196, *Palić*, decision on admissibility and merits delivered on 11 January 2001, paragraphs 81–84, Decisions January—June 2001). In the *Unković* decision, for example, the Chamber "considers that information concerning the fate and whereabouts of a family member falls within the ambit of "the right to respect for his private and family life", protected by Article 8 of the Convention" (*Unković*, decision on review at paragraph 126). According to the Chamber a violation of such a right emerges "When such information exists within the possession or control of the respondent Party and the respondent Party arbitrarily and without justification refuses to disclose it to the family member, upon his or her request, properly submitted to a competent organ of the respondent Party or the Red Cross" (*id.*). The same principles were stated in the *Palić* decision, where the Chamber found a violation of Article 8 in the fact that the respondent Party was "withholding … information" from the applicant concerning the fate of his (or her) missing family member (*Palić*, decision on admissibility and merits at paragraph 82).

4. In the present decision the Chamber has enlarged and extended this right of the family member derived from Article 8; according to paragraph 91 of the decision, "the Chamber is of the opinion that Article 8 of the Convention should be interpreted also to impose upon the authorities the positive obligation to affirmatively seek, collect, and investigate information on the fate and whereabouts of missing persons within their jurisdiction, when properly requested to do so by their family members, and then, to share such information with the family members in a timely manner and in good faith".

5. In my opinion such a right to access to information, that the Chamber has never recognised until now, even in cases in which the authorities of the respondent Party were involved in the disappearance of the family member, could even less be recognised in a case in which such an involvement can be positively excluded and all the elements indicate and confirm that the death of the victim was *caused by a suicide*.

6. For the stated reasons, I respectfully dissent from conclusion no. 5 of the decision on admissibility and merits, which finds a violation of the right to access to information granted by Article 8 of the European Convention on Human Rights.

(signed)
Giovanni GRASSO

(signed)
Mato TADIĆ

(signed)
Jakob MÖLLER

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

Case no. CH/98/688

Idhan MUFTIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 October 2002 with the following members present:

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

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 Bosniak origin. He was formerly employed by the company "Apoteka" in Banja Luka for more than ten years as a pharmacy technician. On 10 November 1992, the applicant was placed on the company's waiting list, and on 25 February 1994, the Director of Apoteka issued a decision terminating the applicant's employment. The applicant introduced a lawsuit against his employer in May 1994. After six hearings and eight postponements and over five years of proceedings, the First Instance Court in Banja Luka ("the First Instance Court") issued a decision in November 1999 refusing the applicant's claims. The applicant filed an appeal against the First Instance Court's decision to the District Court in Banja Luka ("the District Court"), which issued a decision by which it sent back the case to the First Instance Court. On 14 March 2002 the First Instance Court issued a decision acknowledging the applicant's claim. The employer appealed against this decision. The case is still pending before the District Court. The case raises issues under Article 6 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was received on 11 June 1998 and registered on the same day.

3. The Chamber transmitted the application to the respondent Party on 19 March 1999 under Article 6 of the Convention and Article II(2)(b) of the Agreement, with observations due by 19 May 1999. No observations were received from the respondent Party.

4. On 1 June 1999, the applicant was afforded an opportunity to submit any further observations or claims for compensation. His reply was received on 15 June 1999. He requested compensation for the company's failure to provide him with food during that time period.

5. On 18 June 1999, the Chamber transmitted the applicant's letter to the respondent Party for observations within a one-month time period. No observations have been received.

6. On 16 March 2000, the respondent Party informed the Chamber that, as of 25 February 2000, the applicant's case was again being considered by the First Instance Court in Banja Luka.

7. The Second Panel of the Chamber considered the admissibility and merits of the application on 10 March 1999, 10 September 1999 and 7 February 2000. On the latter date, the Chamber decided to postpone consideration of the application until the District Court had rendered its decision on the applicant's appeal. On 9 September 2002, in accordance with Rule 29(4) of the Chamber's Rules of Procedure, the President of the Chamber decided to transfer the application to the First Panel of the Chamber in order to redress an imbalance in the workload of the two Panels. On the same day, the First Panel considered the admissibility and merits of the application. On 8 October 2002, the First Panel adopted the present decision.

III. FACTS

8. The applicant resides in Banja Luka, where he was formerly employed by the company "Apoteka" as a pharmacy technician for more than ten years.

9. On 10 November 1992 the Director of Apoteka placed the applicant on the company's waiting list for a two-year period. The applicant stated that while on the waiting list at Apoteka, he received "symbolic assistance", but he did not receive assistance in the form of food, as others on the waiting list did.

10. On 25 February 1994, the Director of Apoteka issued a decision terminating the applicant's employment effective 28 February 1994. The decision reasoned that the circumstances that led to the applicant's placement on the waiting list (*i.e.*, reduced workload and economic difficulties) still

persisted; therefore, his dismissal was justified under the Law on Labour Relations of the Republika Srpska.

11. On 14 March 1994, the applicant filed a complaint with the Administrative Board of Apoteka against the decision terminating his working relations. The complaint was rejected on 7 April 1994 by a decision of the Board.

12. On 13 May 1994, the applicant filed a lawsuit in the First Instance Court in Banja Luka, requesting that the decision on termination of his employment and the subsequent decision of the Administrative Board be invalidated as illegal. The applicant disputed the fact that any work reduction took place at the Apoteka branch where he worked, and he argued that the termination decision was therefore illegal. He further argued that the Administrative Board decision rejecting his complaint was illegal. He requested reinstatement into his position as a pharmacy technician.

13. In response, Apoteka claimed that work reductions did in fact take place, due to economic difficulties, and that some pharmacies were closed following a decision of 30 December 1993 of the Administrative Board. According to Apoteka, the termination of the applicant's employment was therefore conducted in accordance with existing law.

14. The first First Instance Court hearing was held on 30 November 1995. At this hearing, consideration of the case was postponed for an undetermined amount of time. The defendant Apoteka's representative was instructed to submit to the Court the company's statute that was in effect at the time of the applicant's termination in 1994.

15. Another hearing was held before the First Instance Court in Banja Luka on 24 September 1998. At the defendant Apoteka's request, the Court postponed the hearing until 7 October 1998.

16. On 7 October 1998, the First Instance Court in Banja Luka again postponed hearing the case for an undetermined time. The Court ordered the applicant to submit better quality copies of the 25 February 1994 decision on termination and the 7 April 1994 decision rejecting his complaint. The Court ordered the defendant Apoteka to submit evidence to show when the applicant actually received the decision on termination of 25 February 1994 and the decision rejecting his complaint of 7 April 1994.

17. Another hearing was scheduled before the First Instance Court in Banja Luka on 24 December 1998. Due to the absence of the judge, however, the hearing was postponed until 3 February 1999.

18. The First Instance Court in Banja Luka held a hearing on 3 February 1999. The Court stated that the date the applicant received the Administrative Board decision could not be established from the documents submitted. The hearing was again postponed until 4 March 1999.

19. Another hearing was held before the First Instance Court in Banja Luka on 4 March 1999. The Court requested information from Pošta Banjaluka regarding when the registered delivery of the 7 April 1994 decision was made to the applicant, in order to determine whether the applicant's claim was timely filed.

20. On 2 September 1999, the main hearing in the applicant's case was subsequently postponed and rescheduled for 29 September 1999.

21. The First Instance Court in Banja Luka held another hearing on 29 November 1999. On that date, the Court issued a written judgment rejecting the applicant's complaint as ill-founded. The Court concluded that the applicant's claim had been timely filed, but that the defendant Apoteka's actions were in complete accordance with Article 53(b)(15) of the Law on Labour Relations of the Republika Srpska.

22. The applicant timely appealed to the District Court in Banja Luka against the 29 November 1999 decision of the First Instance Court.

23. As of 25 February 2000, the case was again before the First Instance Court in Banja Luka.

24. On 14 March 2002, the applicant apparently received a First Instance Court decision in his favour. On 29 May 2002 the employer Apoteka appealed against that decision. The case remains pending and a hearing was last scheduled for 2 September 2002.

IV. RELEVANT LEGAL PROVISIONS

A. Law on Labour Relations

25. The legal basis for the applicant's dismissal was Article 53(b)(15) of the Law on Labour Relations of the Republika Srpska (Official Gazette of the Republika Srpska no. 25/93). This Law allowed for dismissal of workers after the expiration of a waiting list period ordered as a result of reduced economic activity of the employer, provided those economic difficulties continued to exist.

B. Law on Civil Proceedings

26. Article 434 of the Law on Civil Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77) states that, in disputes concerning employment, the Court shall pay special attention to the need to resolve such disputes as a matter of urgency.

V. COMPLAINTS

27. The applicant alleges that his right to a fair hearing as guaranteed by Article 6 of the Convention has been violated. The applicant claims that his lawsuit has been intentionally delayed and has not been heard in a reasonable time. Additionally, he alleges differential treatment with regard to compensation while he was on the waiting list.

VI. SUBMISSION OF THE PARTIES

A. The respondent Party

28. The respondent Party has not submitted any formal written observations in the case. In a letter accompanying its submission of the minutes of hearings before the First Instance Court, however, the respondent Party asserted that the reason for the delays in the court proceedings was the court's large intake of cases and the large workload of the judges.

B. The applicant

29. The applicant has stated that while on the waiting list at Apoteka, he received "symbolic assistance", but he did not receive assistance in the form of food, as others on the waiting list did. He requests compensation for the company's failure to provide him with food during that time period. The applicant further contends that the judge who presided over his case in the First Instance Court in Banja Luka dealt with his case in an unfair manner. The applicant asserts that the judge sought irrelevant information, such as the Apoteka company statute, which unjustifiably lengthened the proceedings by many months. He also requests that the Chamber investigate the amount and method of Apoteka's payment of employees after his working relations were terminated.

VII. OPINION OF THE CHAMBER

A. Admissibility

30. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII of the Agreement. In

accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Compatibility *ratione temporis*

31. The Chamber notes that the applicant's complaints relate to the company decision to place him on the waiting list in November 1992, then to the company decision to terminate his employment contract in February 1994 and finally to the labour dispute he introduced before the First Instance Court in May 1994. All those events occurred before 14 December 1995, when the Agreement entered into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (see case no. CH/96/3, *Medan*, decision on admissibility of 4 February 1997, Decisions on Admissibility and Merits 1996-1997). The Chamber must confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date (see case no. CH/97/30, *Damjanović*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997). Therefore, pursuant to Article VIII(2)(c) of the Agreement, the Chamber declares inadmissible as incompatible *ratione temporis* with the Agreement the parts of the application related to the company decisions regarding his placement on the waiting list and the termination of his employment contract.

2. Conclusion as to admissibility

32. The Chamber further finds that no other grounds for declaring the case inadmissible have been established. Accordingly, the Chamber declares admissible the part of the application that concerns the alleged violations of Article 6 of the Convention occurring after 14 December 1995. The Chamber declares inadmissible the remainder of the applicant's complaints.

B. Merits

33. Under Article XI of the Agreement, the Chamber 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.

34. The applicant complains about the lack of fairness in and the length of the proceedings before the First Instance Court and the District Court. The respondent Party states that the delays were the consequence of the large number of cases registered by the courts and that the time it took for the First Instance Court to issue a decision is reasonable.

35. Article 6 of the Convention, insofar as relevant to the present case, reads as follows:

> "1. 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. Determination of the civil character of the proceedings

36. The Chamber recalls that in its constant jurisprudence it has considered that disputes relating to private and employment relations concern "civil rights and obligations". The Chamber further notes that this point has not been put at issue by the parties. Therefore, the Chamber considers that the "right" being claimed by the applicant is a "civil right" within the meaning of Article 6 paragraph 1 of the Convention.

2. Fair hearing

37. The applicant alleges that the proceedings before the First Instance Court have not been fair and that the judge who presided over his case in the First Instance Court dealt with his case in an unfair manner. However, in the present case, the applicant has not offered the Chamber evidence indicating that the proceedings were not fair. Further, the Chamber cannot find any evidence as to a lack of fairness of the courts on its own motion.

38. The Chamber therefore finds that there has been no violation of the applicant's right to a fair hearing as guaranteed by Article 6 paragraph 1 of the Convention.

3. Length of the proceedings

39. The first step in establishing the reasonableness of the length of the proceedings is to determine the period of time to be considered. The Chamber finds that, considering its competence *ratione temporis,* it can assess the reasonableness of the length of the proceedings only with regard to the period after 14 December 1995. It may, however, take into account what stage the proceedings had reached and how long they had lasted before that date.

40. In the present case, the proceedings had lasted over 18 months when the Agreement entered into force. The proceedings before the First Instance Court were concluded on 29 November 1999 by the issuance of a decision refusing the applicant's claim as ill-founded. The proceedings before the District Court were initiated by the applicant's appeal. As of 25 February 2000, the case was again before the First Instance Court. On 14 March 2002 the applicant received a First Instance Court decision in his favour. The employer Apoteka has appealed against that decision, and the case remains pending before the District Court. In summary, after 14 December 1995, the proceedings have lasted 6 years and 10 months as of the date of the present decision, principally due to the fact that it took the First Instance Court over five years to issue its first decision in the applicant's case.

41. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case (*see, e.g.,* case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998; Eur. Court HR, *Rajcevic v. Croatia*, judgment of 23 July 2002, paragraphs 36).

42. The respondent Party has not stated any specific reasons that could have justified the long length of the proceedings in the applicant's case.

43. The Chamber notes that the legal issues in the underlying case concern a labour dispute and the termination of the applicant's employment contract. Considering that those types of disputes are frequent in Bosnia and Herzegovina, the case does not seem to the Chamber to be so complex as to require more than five years of proceedings to issue a first decision.

44. The Chamber notes that the applicant was not responsible for the length of the proceedings. The Chamber observes that the respondent Party has not objected to the applicant's allegation that the reason for postponing six of the eight hearings before the First Instance Court was the request of the Court to submit different documents. The two other postponements occurred due to the absence of the judge or at the request of the defendant.

45. Having in mind the armed conflict, the Chamber notes that it is not reasonable to expect that the domestic courts were able to issue decisions at a normal speed immediately after the cessation of the armed conflict. The Chamber is therefore of the opinion that some delay by the domestic courts in issuing decisions must be accepted. However, the Chamber notes that the present case has been pending for almost seven years after the cessation of the armed conflict.

46. Furthermore, the Chamber considers that the conduct of the First Instance Court, delaying a decision in what appears to be an uncomplicated employment dispute, was primarily responsible for

the more than five-year delay between the complaint and the first decision. Therefore, the Chamber finds that the respondent Party is responsible for the unreasonable length of the proceedings.

47. The Chamber therefore finds a violation of Article 6 paragraph 1 of the Convention with regard to the length of the proceedings.

VIII. REMEDIES

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

49. The applicant requested that the Chamber investigate the amount and method of Apoteka's payment of employees after their working relations had been terminated. The applicant also requested that he be reinstated into his former employment position with Apoteka.

50. The Chamber notes that it has found a violation of the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention. It considers it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant's case is resolved by a final and binding decision in a reasonable time.

51. Furthermore, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided before the domestic organs.

52. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 1500 Convertible Marks (*Konvertibilnih Maraka*) in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

53. The Chamber further awards simple interest at an annual rate of 10% as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

54. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible the part of the application relating to the fairness and the length of the domestic proceedings in the applicant's civil dispute occurring after 14 December 1995;

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

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 Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, to order the Republika Srpska, through its authorities, to take all necessary steps to ensure that the applicant's case is resolved by a final and binding decision in a reasonable time;

5. by 6 votes to 1, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, one thousand five hundred (1500) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

6. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above

one-month period until the date of settlement in full; and

7. unanimously, to order the Republika Srpska to report to it no later than three month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

DECISION ON ADMISSIBILITY AND MERITS

(delivered on 9 June 2000)

Case no. CH/98/698

Rasim JUSUFOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 May 2000 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. Anders MÅNSSON, 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 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, to regain possession of an apartment in Bijeljina, Republika Srpska, over which he holds the occupancy right. He lived in the apartment until 1994, when he was forcibly evicted from it by a group of armed men. The applicant has initiated various administrative and judicial proceedings to regain possession of the apartment, so far without success.

2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights, under Article 1 of Protocol No. 1 to the Convention and under Article II(2)(b) of the Agreement in relation to discrimination.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 16 June 1998 and registered on the same day.

4. On 9 October 1996 the applicant applied to the Human Rights Ombudsperson for Bosnia and Herzegovina concerning the same matter. His application to that office was registered under no. 224/96. On 31 March 1999 he submitted to the Chamber a copy of a letter he had sent to the Ombudsperson, in which he requests that office to cease dealing with his application in order that the Chamber could consider it. On 6 April 1999 the Ombudsperson informed the applicant in writing that she had decided not to open an investigation into the matter.

5. On 11 May 1999 the application was transmitted to the respondent Party for its observations on its admissibility and merits, which were received on 31 July 1999.

6. The applicant's further observations, including a claim for compensation, were received on 3 and 6 August 1999 and transmitted to the respondent Party on 4 and 16 August 1999. The respondent Party was requested to submit observations on the claim for compensation submitted by the applicant but did not do so. On 17 April 2000 the applicant submitted certain further factual information to the Chamber, which on 25 April 2000 was transmitted to the respondent Party for information.

7. On 6 April and 10 May 2000 the Chamber considered the admissibility and merits of the application. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

8. The facts of the case as they appear from the submissions of the Parties and the documents in the case-file may be summarised as follows.

9. On 14 April 1979 the applicant was granted the occupancy right over an apartment located at Žrtava Fašističkog Terora street 25/13 in Bijeljina, by the holder of the allocation right over it, the local Gymnasium (secondary school). On 1 August 1979 he entered into a contract for the use of the apartment with the appropriate body. The applicant lived in the apartment until August 1994, when he was forcibly evicted from it by members of a paramilitary group known as the "Panthers". The applicant went to Montenegro in the Federal Republic of Yugoslavia.

10. On 14 November 1994 and again on 26 February 1996, the holder of the allocation right over the apartment purported to grant the occupancy right over it to R.Đ, a teacher of Serb origin at the school, who still occupies it. The holder of the allocation right had not initiated court proceedings for the termination of the applicant's occupancy right over the apartment.

11. On 10 September 1996 the applicant applied to the Department for Housing-Communal Affairs of the Municipality of Bijeljina, requesting that he be allowed to regain possession of the apartment. He has not received any reply to this request to date.

12. On 2 October 1996, soon after his return to Bijeljina, the applicant initiated proceedings before the Court of First Instance in Bijeljina against the Gymnasium, R.Đ and the housing company in Bijeljina, requesting that he be entitled to regain possession of the apartment. The court held a number of hearings in the case and requested information from the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Bijeljina, a department of the Ministry for Refugees and Displaced Persons, concerning whether the apartment had ever been declared abandoned. At a hearing held before the Court on 9 April 1997 R.Đ presented to it a decision of the Commission dated 28 November 1996, allocating the apartment to him for his use on the basis that it was abandoned property.

13. On 28 May 1997 the court issued its decision. It declared itself absolutely incompetent to decide the matter as it concerned abandoned property, taking into account a decision of the Regional Court in Bijeljina dated 5 March 1997 in which it was stated that courts of first instance should declare themselves incompetent to deal with cases involving property declared abandoned under the Law on Use of Abandoned Property.

14. On 28 August 1997 the applicant lodged an appeal to the Regional Court in Bijeljina against the decision of the Court of First Instance of 28 May 1997. The ground of his appeal was that the apartment had never been entered into the register of abandoned property and therefore, within the meaning of the Law on Use of Abandoned Property, was not abandoned. On 18 December 1997 the applicant submitted to the Regional Court a certification from the appropriate administrative organ in Bijeljina that the apartment had never been entered into the list of abandoned apartments.

15. On 25 March 1998 the Regional Court refused the applicant's appeal and confirmed the decision of the Court of First Instance. The reason for this refusal was that the Commission had allocated the apartment to R.Đ. as abandoned property and the question of whether this was in accordance with the law or not was not within the scope of the courts to decide. Instead, such a question should be decided in administrative proceedings.

16. The applicant lodged a request for review of the decision of the Regional Court to the Supreme Court of the Republika Srpska, which is an extraordinary remedy. On 19 May 1999 the Supreme Court refused the request. The reason it gave was that the legal regime concerning abandoned property was a special one and that issues concerning such property could only be decided in administrative proceedings, and not in court proceedings.

17. On 5 March 1998 the applicant applied to the Executive Board of the municipality in the same regard. On 9 March 1998 the board issued an "Information note" that in view of the fact that the applicant had applied to the Court of First Instance in Bijeljina in the same matter it would request the court to proceed with those proceedings in a speedy manner.

18. On 25 July 1998 the applicant applied to the Commission in Bijeljina, requesting that it annul its decision of 28 November 1996 (see paragraph 12 above) and allow him to regain possession of the apartment. There has been no decision on this application to date.

19. On 19 and 23 December 1998, soon after the entry into force of the Law on Cessation of Application of the Law on Use of Abandoned Property, the applicant again applied to the Commission in Bijeljina to regain possession of the apartment. There has been no decision on this application to date.

20. In the meantime, on 11 August 1997 the applicant had applied to the Commission for Real Property Claims ("Annex 7 Commission") for a decision that he is the holder of the occupancy right over the apartment and entitling him to regain possession of it. On 28 October 1999 he received a decision in these terms. On 29 December 1999 he submitted this decision to the Commission in Bijeljina, requesting that it be enforced, in accordance with the Law on Enforcement of Decisions of the Commission for Property Claims of Refugees and Displaced Persons (see paragraphs 51-57

below). According to the latest information provided by the applicant, no steps have been taken by the relevant national authorities in this regard to date.

21. The applicant has not yet regained possession of the apartment.

B. Relevant legislation

1. Constitution of the Republika Srpska

22. Article 121 of the Constitution of the Republika Srpska reads as follows:

> "The judicial function is performed by the courts. The courts are independent and decide upon the basis of the Constitution and laws.
>
> The courts protect human rights and freedoms, established rights and interests of legal entities and legality."

2. The Law on Use of Abandoned Property

23. The Law on Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96) ("the 1996 law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It established a legal framework for the administration of abandoned property. Accordingly, it defined what forms of property were to be considered as abandoned and set out the categories of persons to whom abandoned property may be allocated. The provisions of the 1996 law, insofar as they are relevant to the present cases, are summarised below.

24. Articles 2 and 11 define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

25. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

26. Article 15 reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
> - to the families of killed soldiers
> - war invalids with injuries in categories I-V
> - war invalids with injuries in categories V-X
> - qualified workers of whom there is a lack in the Republika Srpska."

27. Article 15A (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

28. Articles 39-42 set out the terms upon which the owner (sic) of a property which has been declared abandoned may seek to regain possession of it.

29. Article 39 reads as follows:

> "The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement

between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia."

30. Article 40 reads as follows:

"In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.

If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:
- within 30 days from the day the person who was the occupier of the property returns to his property or apartment
- at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation. …."

31. Article 42 reads as follows:

"The provisions of Articles 39-41 of this law shall be applied on the basis of reciprocity."

3. The Law on Cessation of Application of the Law on Use of Abandoned Property

32. The Law on Cessation of Application of the Law on Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; "the 1998 law"), as amended, establishes a detailed framework for persons to regain possession of property considered to be abandoned. It puts the 1996 law out of force.

33. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

34. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as "temporary users") in order to allow the previous owner, possessor or user to return.

35. Upon receipt of an application, the responsible body shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the 1998 law to be provided with alternative temporary accommodation. If it determines that this is the case, the relevant body of the Ministry (i.e. the local Commission) shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

36. Any failure of the responsible authority to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

37. Article 8 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Such claims may be filed with the responsible body of the Ministry. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

38. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

39. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Proceedings and treated as an expedited procedure.

40. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances, which shall be agreed upon by the Office of the High Representative. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

41. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

4. The Law on General Administrative Proceedings

42. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

43. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Proceedings. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Proceedings.

44. Chapter XVII (Articles 270 – 288) is concerned with the procedure for enforcement of rulings and conclusions.

45. Article 270 states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of any appeal expires without any such appeal having been submitted.

46. Article 274 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

47. Article 275 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. of reinstatement to property) is to be carried out by an administrative procedure.

48. Under Article 277(1), administrative execution shall be carried out by the administrative body which issued the first instance decision, unless a different procedure is provided for by law.

49. Article 286 states that if the person against whom execution is ordered does not comply with the decision, the administrative body which made the decision shall ensure the execution of the

decision. The administrative body shall warn the person against whom execution is ordered that if he or she does not comply with the decision within a specified period that forceful means shall be employed to ensure execution of the decision. If he or she fails to comply with the decision within this specified period, the threatened means shall be applied immediately and also a further date shall be set for execution, involving the use of further, stronger, means.

50. Article 287 provides for the use of direct force to ensure the execution of a decision which cannot be executed using the procedure provided for under Article 286 above.

5. Law on Enforcement of Decisions of the Commission for Property Claims of Refugees and Displaced Persons

51. The Law on Enforcement of Decisions of the Commission for Property Claims of Refugees and Displaced Persons (OG RS no. 31/99) was imposed as a law of the Republika Srpska by a decision of the High Representative in Bosnia and Herzegovina on 27 October 1999. It sets out a regime for the enforcement of decisions of the Annex 7 Commission. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

52. Article 2 states that decisions of the Annex 7 Commission are final and binding as of the day of their issuance. Such decisions confirm the rights over the property concerned in the decision, in favour of the person named in such decision.

53. Article 3 states that such decisions are to be enforced by the Commission of the Ministry for Refugees and Displaced Persons for the area in which the relevant property is located.

54. Article 4 sets out the categories of persons who may seek enforcement of a decision of the Annex 7 Commission. In respect to socially-owned property, one of these categories is the person named in the decision as being the holder of the occupancy right over the apartment.

55. Articles 5 and 6 set out the formal requirements which a request for enforcement of a decision of the Annex 7 Commission must comply with.

56. Article 7 states that the competent organ, i.e. the local Commission, is obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of a request for such enforcement. It also sets out the details which such conclusion must contain.

57. Article 9 states that a decision of the Annex 7 Commission is enforceable against the current occupants of the property concerned, regardless of what basis they so occupy it.

IV. COMPLAINTS

58. The applicant complains of violations of his rights as guaranteed by Articles 6, 8 and 13 of the Convention and of discrimination in the enjoyment of those rights.

V. SUBMISSIONS OF THE PARTIES

59. The Republika Srpska, in its observations, received in July 1999, on the admissibility and merits of the application, alleges that the applicant has not applied to regain possession of the apartment under the 1998 law. In addition, the applicant initiated court proceedings at domestic level and submitted his application to the Chamber while these proceedings were still pending.

60. The Republika Srpska also states that the applicant has applied to the Ombudsperson concerning the same matter and concludes that, for these reasons, the Chamber should declare the application inadmissible.

61. The applicant maintains his complaint. He claims that the remedies available to him are ineffective, as he has sought to avail himself of all the remedies available to him in the legal system of the Republika Srpska, without success.

VI. OPINION OF THE CHAMBER

A. Admissibility

62. 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.

1. Exhaustion of domestic remedies

63. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but 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 ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

64. The Chamber notes that the applicant initiated proceedings before the Court of First Instance in Bijeljina, seeking to regain possession of the apartment. However, these proceedings were rejected by the court and the applicant's appeal and subsequent request for review of the decision of the Regional Court upon that appeal were refused as ill-founded (see paragraphs 12-16 above).

65. The Chamber notes that in its decision on the applicant's request for review of the decision of the Regional Court (see paragraph 16 above), the Supreme Court of the Republika Srpska held that matters concerning abandoned property are within the sole competence of the Ministry, as such issues should be decided by an administrative procedure rather than by the courts.

66. Accordingly, having recourse to the courts does not appear to be an effective remedy, as the Chamber has previously held (see, e.g., cases nos. CH/98/659 *et al*., *Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraphs 151–152, Decisions August-December 1999).

67. The Chamber notes that the applicant has applied under the 1998 law to regain possession of the apartment. However he has not yet received any decision under this law, despite the time-limit for the issuing of such a decision having expired in January 1999.

68. As the Chamber noted in its decision in *Eraković* (case no. CH/97/42, decision on admissibility and merits delivered on 15 January 1999, paragraph 40, Decisions January-July 1999) a remedy such as that provided for by the law applicable in the Federation of Bosnia and Herzegovina, analogous to the 1998 law in the Republika Srpska, could in principle qualify as an effective one. The Chamber finds that its analysis in that case applies equally to the 1998 law, i.e. the Republika Srpska law, relevant to the present case.

69. In the *Eraković* case, the Chamber considered the factual background to the case in the context of its admissibility. It held that the circumstances of that case, including the failure to adhere to the relevant time-limits, meant that the applicant could not be required to exhaust any further remedy provided for by national law. The Chamber finds that the same applies in the present case.

70. The Chamber finds, in the circumstances, that the requirements of Article VIII(2)(a) of the Agreement have been met.

2. *Res judicata* and *lis alibi pendens*

71. The Republika Srpska claims that the Chamber should refuse to accept the case, as an application concerning the same matter is pending before the Ombudsperson. However the applicant has requested that institution to cease dealing with the matter so that the Chamber can consider it and on 6 April 1999 the Ombudsperson decided not to open an investigation into the matter. Therefore, the case is not inadmissible on this ground.

72. The Chamber notes that the applicant has received a decision of the Annex 7 Commission (see paragraph 20 above). According to Article VIII(2)(b) of the Agreement, the Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or which has already been submitted to another procedure of international investigation or settlement.

73. The Annex 7 Commission, in Article XI of Annex 7, has a mandate of issuing decisions on claims for real property in Bosnia and Herzegovina, where the property has not been sold voluntarily or otherwise transferred since 1 April 1991 and where the claimant does not now enjoy possession of that property. In the present case, the applicant has raised issues other than those within the competence of the Annex 7 Commission. He complains of the conduct of the court proceedings he initiated and also that he has been discriminated against on the ground of his ethnic origin. For the same reasons as in case no. CH/98/756 *Đ.M.* (decision on admissibility and merits delivered on 14 May 1999, Decisions January-July 1999), these matters fall outside the competence of the Annex 7 Commission and therefore the Chamber is not precluded from considering the case on this ground.

74. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

75. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

76. Under Article II(2) of the Agreement the Chamber has competence 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 16 international agreements listed in the Appendix to the Agreement (including the Convention), where such a violation is alleged to or appears to have been committed by the Parties, including by any organ or official of the Parties, Cantons or Municipalities or any individual acting under the authority of such an official or organ.

1. Article II(2)(a) of the Agreement

(a) Article 6 of the Convention

77. Article 6 of the Convention, insofar as relevant, provides 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 ...."

78. The applicant claimed that he had been a victim of a violation of his rights as guaranteed under this provision.

79. The respondent Party did not submit any observations under this provision.

80. The Chamber recalls that it has held that the right to enjoyment of one's occupancy right is a civil right, within the meaning of Article 6 of the Convention (see, e.g., case no. CH/97/93*, Matić,* decision on admissibility and merits delivered on 11 June 1999, paragraph 74, Decisions January-July 1999).

81. The Chamber notes that the applicant initiated proceedings before the Municipal Court in Bijeljina on 2 October 1996, requesting that he be entitled to regain possession of the apartment. On 28 May 1997 the court declared itself incompetent to deal with the matter, as proceedings concerning return of property may only be dealt with in administrative proceedings. The applicant's appeal against this decision was refused by the Regional Court in Bijeljina on the same ground, as was his request for review to the Supreme Court (see paragraphs 14-16 above). As the Chamber has previously noted (see *Pletilić and others,* sup. cit., paragraph 192), the courts of the Republika Srpska have a practice of suspending consideration of claims for repossession of abandoned and other property, holding that such questions are to be determined by administrative proceedings before the Ministry.

82. The Chamber notes that Article 121 of the Republika Srpska Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 22 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. Such a removal would require a specific statement to this effect. The Chamber has previously found that in the absence of a specific statement to that effect, the 1996 law did not remove court jurisdiction over property that was considered to be abandoned (see *Pletilić and others,* sup. cit., paragraph 194).

83. Nevertheless, the practical effect of the decisions of the courts in the applicant's proceedings is that it is impossible for him to have the merits of his civil action for the return into his possession of the apartment over which he holds the occupancy right determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, there has been a violation of his right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

(b) Article 8 of the Convention

84. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

85. The applicant claimed that he had been a victim of a violation of his rights as guaranteed under this provision.

86. The respondent Party did not submit any observations under this provision.

87. The Chamber notes that the applicant lived in the apartment without interruption from 1979 until August 1994, when he was forcibly evicted from it. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/777, *Pletilić,* decision on admissibility and merits delivered on 8 October 1999, paragraph 74, Decisions August-December 1999). The Chamber therefore considers that the apartment is the applicant's "home" for this purpose.

88. As the applicant was evicted from the apartment prior to the entry into force of the Agreement, the Chamber has no competence *ratione temporis* to examine that event.

89. On 28 November 1996 the Commission in Bijeljina allocated the apartment to R.Đ. on the basis that it was abandoned property.

90. Furthermore, as noted above (see paragraphs 11-19 above), the applicant has initiated court and administrative proceedings seeking to regain possession of the apartment. However, these proceedings have been unsuccessful to date and he has not yet regained possession of it.

91. In addition, the applicant has received a decision of the Annex 7 Commission confirming his occupancy right over the apartment. He has requested enforcement of this decision, in accordance with the appropriate law (see paragraph 20 above). However, despite the fact that the time-limit for the issuing of a conclusion authorising him to regain possession of it having expired, the Commission in Bijeljina has not issued such a conclusion.

92. Therefore, the applicant has been unable to regain possession of the apartment due to the failure of the authorities of the Republika Srpska to deal effectively with his various applications in this regard, which he commenced in October 1996, three years and eight months ago.

93. As a result, the respondent Party is responsible for the interference with the right of the applicant to respect for his home, as a result of the allocation of the apartment to R.Đ. for use in 1996 and as a result of the failure of its judicial and administrative authorities to deal with the applicant's applications to regain possession of it.

94. The Chamber must therefore examine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention.

95. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", serve a legitimate aim and be "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied.

96. Neither in the domestic proceedings initiated by the applicant nor in the proceedings before the Chamber has any evidence been produced showing that the apartment concerned was ever entered into the register of abandoned property, as required by the law in force at the time, the 1996 law (see paragraph 24 above). The applicant has provided evidence from the competent organ to show that the apartment was never so registered (see paragraph 14 above). Accordingly the decision of the Commission of 28 November 1996 was not in accordance with the law.

97. As the Chamber has noted in the context of its examination of the case under Article 6 of the Convention (see paragraph 81 above), the courts of the Republika Srpska refused the applicant's application to regain possession of his home, as they consider themselves incompetent in such matters. The Chamber has found that this is not in accordance with the Constitution of the Republika Srpska. Accordingly, the failure of the courts to decide upon the applicant's proceedings is not "in accordance with the law" as required by paragraph 2 of Article 8.

98. As both the interferences with the applicant's right to respect for his home referred to above are not "in accordance with the law", it is not necessary for the Chamber to examine whether they pursued a "legitimate aim" or were "necessary in a democratic society".

99. Regarding the administrative proceedings initiated by the applicant, he still has not received a decision on his request to regain possession of the apartment, despite the time-limit for this having expired in January 1999 (see paragraph 19 above). Accordingly, also the failure of the Commission to act is not "in accordance with the law".

100. In conclusion, there has been a violation of the right of the applicant to respect for his right to his home as guaranteed by Article 8 of the Convention.

(c) Article 13 of the Convention

101. Article 13 of the Convention provides as follows:

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

102. The applicant alleged a violation of his rights as guaranteed by this provision. The respondent Party did not submit any observations under this provision.

103. The Chamber, having regard to the violation of the applicant's rights it has found in its examination of the case under Article 6 of the Convention, does not consider it necessary to examine the case under this provision.

(d) Article 1 of Protocol No. 1 to the Convention

104. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

105. The applicant claimed that he had been a victim of a violation of his rights as guaranteed under this provision.

106. The respondent Party did not submit any observations under this provision.

107. The Chamber notes that the applicant is the holder of the occupancy right over the apartment in question. The Chamber has previously held as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

> "... An occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 [of Protocol No. 1] ..."

108. In addition, the applicant's occupancy right over the apartment has been confirmed by a decision of the Annex 7 Commission (see paragraph 20 above). Accordingly, the Chamber considers that the applicant's rights in respect of the apartment constitute his "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

109. The Chamber considers that the allocation of the apartment by the Commission to R.Đ. on 28 November 1996 and the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of the apartment constitutes an "interference" with his right to peaceful enjoyment of that possession. This interference is ongoing as the applicant still does not enjoy possession of that apartment.

110. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

111. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the actions of the authorities in relation to the allocation of the apartment to R.Đ. and the failure to allow him to regain possession of it were not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated.

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

112. The applicant also alleged that he had been discriminated against in the enjoyment of his rights as protected by the Agreement. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

> "alleged or apparent 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 arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement ...."

113. The respondent Party did not submit any observations under this provision.

114. The Chamber notes that it has already found violations of the applicants' rights as protected by Articles 6 and 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention. It must now consider whether he has suffered discrimination in the enjoyment of those rights.

115. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls its jurisprudence. As the Chamber noted in the *Đ.M.* case (sup. cit., paragraph 73), it is necessary first to determine whether an applicant was treated differently from others in the same or relevantly 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 of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin.

116. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see *Đ.M.,* sup. cit., paragraph 75).

117. The Chamber notes that the applicant is of Bosniak origin and that his occupancy right over the apartment concerned in the application has never been disputed in the various proceedings he has initiated to regain possession of it. This right has been confirmed by a decision of the Annex 7 Commission (see paragraph 20 above). In addition, his occupancy right over the apartment has never been terminated. Nevertheless, his various attempts to regain possession of the apartment, which have so far lasted three years and eight months, have been unsuccessful, both at the judicial and administrative level.

118. The applicant's administrative proceedings under the 1998 law to regain possession of his apartment have been pending since December 1998. The time-limit for the issuing of a decision by the Commission in Bijeljina expired in January 1999, but he has not received such a decision (see paragraph 19 above).

119. The right of the applicant to occupy the apartment is not in dispute. He is clearly entitled under the law of the Republika Srpska to regain possession of it. Furthermore, that law sets out clearly the procedure for dealing with the current occupant of the apartment in respect of alternative accommodation and specifies that the requirement to provide such a person with alternative accommodation cannot delay the return of the pre-war occupant to a property.

120. In addition, the Chamber has found that the standpoint of the courts in the Republika Srpska (see paragraph 81 above) was such as to deny the applicant his right of access to court. The decision of the Annex 7 Commission confirming the applicant's occupancy right over the apartment has not been enforced to date, despite the applicant having requested such enforcement in accordance with the appropriate law (see paragraph 20 above).

121. The applicant has sought to avail himself of various legal procedures to regain possession of the apartment since October 1996. He has initiated court proceedings, lodged an appeal against the first instance decision and lodged a request for review of the second instance decision. He has initiated administrative proceedings, and received a decision from the Annex 7 Commission.

122. Despite all of these efforts, he still has not succeeded in regaining possession of the apartment. The respondent Party has not put forward any credible reasons for this delay and the Chamber cannot of its own motion find any.

123. The Chamber notes that the vast majority of persons who were forced to leave their homes during the war were persons who were in a minority. The Chamber considers that the only plausible reason for the deliberate obstruction experienced by the applicant in seeking to regain possession of the apartment is the fact that he is of Bosniak origin. Persons belonging to the majority ethnic group in Bijeljina, Serbs, will not suffer obstruction in their efforts to regain possession of property, as they were never forced to leave it in the first place. Furthermore, the obstruction suffered by persons in the applicant's position has the direct effect of protecting the position of persons who currently occupy property which members of a minority were forced to leave. These persons are of Serb origin.

124. The Chamber recognises that after the war in Bosnia and Herzegovina the entities are faced with serious problems due to the number of damaged properties and refugees and displaced persons. However this cannot excuse obstruction of persons seeking to regain possession of what they are clearly entitled to, especially when this obstruction is carried out against members of a minority ethnic group to protect members of a majority ethnic group.

125. The Chamber concludes that the applicant has been discriminated against in the enjoyment of his rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and that this discrimination has been on the ground of his Bosniak origin.

VII. REMEDIES

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

127. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain possession of the apartment within one month.

128. The applicant has submitted a claim for compensation. The respondent Party did not submit any observations on this claim.

129. In his claim for compensation the applicant requests compensation for the following matters:
- for the costs of redecorating the apartment upon his regaining of possession: 3,000 Convertible Marks (*Konvertibilnih Maraka,* "KM");
- for his inability to use the apartment since August 1994: KM 200 per month;
- for each day after the decision of the Chamber until the date he regains possession of the apartment: KM 30;
- for mental suffering: KM 20,000;
- for his personal belongings which he claims were taken from the apartment, which he supplies a list of: KM 28,195;
- interest on the above sums.

130. In addition, the applicant requests that the Republika Srpska be ordered to return to him a painting which was in the apartment called "*Cvijet*" ("flower"), which is of particular emotional value to him.

131. Concerning the applicant's claim for his personal belongings, the Chamber notes that there is no evidence before it that these belongings were alienated after 14 December 1995, the date of entry into force of the Agreement. Accordingly, the Chamber has no competence ratione temporis to examine this issue. In addition, there is no indication that the respondent Party is responsible for any damage that may have occurred to his belongings. Accordingly, this claim must be rejected. The same reasoning applies to the painting "Flower" the applicant requests to be returned to him.

132. Regarding the applicant's claim for moral damages, the Chamber does consider it appropriate to award him a sum under this head. The applicant has undoubtedly suffered stress as a result of the fact that he has, despite initiating various administrative and court proceedings, been unable to regain possession of the apartment over which he holds the occupancy right. As the Chamber found, this inability is due to the discriminatory actions of the authorities of the Republika Srpska. In a group of cases where the Chamber made a similar finding (see *Pletilić and others,* sup. cit., paragraph 236), the Chamber awarded each applicant the sum of KM 1,200 under this head. The Chamber therefore considers that this is a reasonable sum to award the applicant in the present case and will accordingly award the applicant this sum.

133. Concerning the applicant's request for KM 3,000 for the costs of redecoration of the apartment, as the Chamber held in *Pletilić and others* (sup. cit., paragraph 239), such claims relate to possible future costs which the applicant may incur and therefore must be rejected as unsubstantiated.

134. The applicant claims the sum of KM 200 per month from August 1994, as a result of his inability to use the apartment. He has supplied a letter from the housing company in Bijeljina, in which it is stated that an apartment such as that concerned in the present case would cost approximately KM 200 per month to rent. The Chamber considers this to be a reasonable sum. However it must be determined as from what date the Republika Srpska is responsible for the inability of the applicant to use the apartment. As noted above, the Chamber only has competence to examine issues that occurred after 14 December 1995.

135. The Chamber considers that the Republika Srpska can only be considered to be responsible for this inability to use the apartment as and from the passing of a reasonable time after the applicant's first steps to regain possession of the apartment, i.e. when he applied to the Municipality of Bijeljina on 10 September 1996 (see paragraph 11 above). The Chamber considers that the authorities of the Republika Srpska must be allowed a reasonable time to deal with requests for return of property. In the present case, the Chamber considers this reasonable time to have expired on 31 December 1996, nearly four months after the applicant's first attempt to regain possession of the apartment. Accordingly, the Republika Srpska is responsible for the inability of the applicant to regain possession of his apartment as and from 1 January 1997 and therefore the Chamber will order the Republika Srpska to pay to him the sum of KM 8,400 in respect of the period from 1 January 1997 to the end of the month in which this decision is delivered (i.e. June 2000) and KM 200 per month from 1 July 2000 until the date the applicant actually regains possession of the apartment. Additionally, the Chamber awards 4% (four per cent) interest as of the date of expiry of the period set for the implementation of the present decision, on the above sums.

VIII. CONCLUSION

136. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the impossibility for the applicant to have the merits of his civil action determined by a tribunal constitutes a violation of his right to effective access to court within the

meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that there has been and continues to be a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that there has been and continues to be a violation of the right of the applicant to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that the applicant has been and continues to be discriminated against in the enjoyment of his rights as protected by Articles 6 and 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

6. unanimously, to order the Republika Srpska, as soon as possible and in any event no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, to take all necessary steps to ensure that the applicant regains possession of the apartment over which he holds the occupancy right located at Žrtava Fašističkog Terora 25/13 in Bijeljina, Republika Srpska;

7. unanimously, to order the Republika Srpska to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,200 (one thousand two hundred) Convertible Marks as compensation for moral suffering;

8. unanimously, to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 8,400 (eight thousand four hundred) Convertible Marks in respect of his inability to use the apartment concerned in the application from 1 January 1997 until 30 June 2000;

9. unanimously, to pay to the applicant, within one month from the date when he regains possession of the apartment concerned in the application, the sum of 200 (two hundred) Convertible Marks per month from 1 July 2000 until the end of the month in which he regains possession of that apartment;

10. unanimously, to reject the remainder of the applicant's claim for compensation as unsubstantiated;

11. unanimously, to order that simple interest at an annual rate of four per cent will be payable on the sums awarded in conclusions 7, 8 and 9 above after the expiry of the period set in those conclusions for the payment of such sums; and

12. unanimously, to order the Republika Srpska to report to it, within two weeks of the expiry of the time-limit referred to in conclusions 6, 7, 8 and 9 above, on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 January 2002)

Case no. CH/98/704

JOVANKA KOVAČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 January 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 Article VIII(2) and Article XI of the Agreement as well as Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant owned a house and business premises (hereinafter "the house") built on socially owned land in the Municipality of Sanski Most. In October 1995 the applicant left Sanski Most due to the hostilities. On 19 December 1995 the house burnt down completely in a fire. The remaining ruins were removed. In 1997 the Municipality classified the plots on which the applicant's house had stood before the fire to be undeveloped building land. In 1998 the Municipality allocated the plots to S. K. and allowed S. K. to build on the plots in question, thereby ignoring the applicant's priority right to reconstruct the house on the land. The applicant applied to the Municipality to stop the ongoing construction works on the plots. However, no such order was passed and S. K. meanwhile has built a house on the plots in question. The applicant died on 28 November 1998. Her daughter pursues the case.

2. The case mainly raises issues under Article 1 of Protocol No. 1 to the European Convention of Human Rights (hereinafter "the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced via the Human Rights Ombudsperson for Bosnia and Herzegovina and registered on 10 July 1998. It included a request for provisional measures asking the Chamber to order the respondent Party to take the necessary steps to stop all ongoing construction on the plots kč 759, 760, registered in the possession list (PL) 1089 of cadasteral municipality (KO) of Sanski Most. On 16 July 1998 the Chamber refused the request for provisional measures and decided to transmit the case to the respondent Party for its observations.

4. The case was transmitted to the respondent Party on 11 August 1998. On 29 September 1998 the respondent Party requested an extension of the time-limit fixed for the observations on admissibility and merits.

5. On 19 October 1998 the Chamber informed the applicant that the respondent Party had not submitted observations on admissibility and merits within the time-limit and afforded the applicant the possibility to submit a compensation claim.

6. On 10 November 1998 the Chamber received from applicant further observations containing further information and a compensation claim. The applicant asked for allocation of another building plot in Sanski Most and 426.000 Convertible Marks (Konvertibilnih Maraka, hereinafter "KM") as compensation for the burnt-down house.

7. On 2 February 1999 the applicant's further information and compensation claim was transmitted to the respondent Party for observations. On 18 May 1999 the daughter submitted a letter to the Chamber pointing out the urgency of the case.

8. On 10 March 2000 the Chamber received a letter and further documents from the daughter.

9. On 15 March 2000 the Chamber received observations on admissibility and merits from the respondent Party. On 23 March 2000 these were transmitted to the daughter who replied submitting observations on 17 April 2000.

10. On 2 April 2001 the Chamber received additional information from the respondent Party and an up-date on the compensation claim of the daughter now asking for a total of 846,000 KM. On 20 April 2001 the Chamber transmitted the compensation claim to the respondent Party. On 3 May 2001 the applicant's daughter submitted new documents. The respondent Party sent additional observations on the compensation claim which were received on 19 May 2001. On 29 May 2001 the Chamber received additional information from the respondent Party.

11. On 25 September 2001 the Chamber requested additional information from both Parties which was received on 8 October 2001 from the applicant and on 19 October 2001 from the respondent Party.

12. On 8 February 2000, 9 March 2001, 10 October 2001, 9 November 2001 and 6 December 2001 and on 7 and 8 January 2002 the Chamber considered the admissibility and merits of the application. On 8 January 2002 the Chamber adopted the present decision.

III. FACTS OF THE CASE

13. The applicant owned a house and business premises used as a café and restaurant built on socially owned land in the Municipality of Sanski Most (hereinafter "the Municipality"), cadasteral plots no. 759 and 760, registered in the possession list (PL 1089) in the cadasteral municipality (KO) of Sanski Most (hereinafter "the plots"). During the hostilities, in October of 1995, the applicant, who is a citizen of Bosnia and Herzegovina of Serb ethnic origin, left Sanski Most for Banja Luka.

14. On 19 December 1995 the house burnt down completely. The report of the Army of Bosnia and Herzegovina of 20 December 1995, which investigated the fire, established that construction workers who were working in the building had made a big fire in the fireplace on the evening of 19 December 1995, a cold winter night. They left the building at around 7 p.m. when they thought that the fire was weak enough to be left without surveillance. Probably as a result of a blocked chimney wooden constructions in the house caught fire. The house and all other facilities completely burnt down in spite of efforts of local people, members of the military and the fire brigade to extinguish the fire. A police investigation into the cause of the fire was carried out but no-one was found criminally responsible for the incident. It remains unclear who had employed the workers to do construction work in the house. Subsequently, the remaining ruins were removed from the plots.

15. In the period after the 1992-95 war, the Municipality was faced with massive destruction of housing due to the hostilities. This resulted in problems of finding suitable living space for a growing number of refugees. On 5 February 1997 the Municipality therefore formed a commission to determine the right to use city building land. The commission allowed the allocation of undeveloped building land to the citizens of Sanski Most even at the cost of holders of pre-war rights over this land. However, the reallocation was only possible under the condition that the land in question was socially owned and undeveloped.

16. By procedural decision of 7 June 1997 the applicant was deprived of her right to use the building land and the Municipality classified the land which the applicant's house had stood on as undeveloped building land. The fact that the applicant had a right to reconstruct the house on the same plots according to Article 43 paragraph 2 of the Law on Building Land (see paragraph 31 below) was ignored. It remains unclear whether the Municipal organ was aware of the fact that there had been the applicant's house on the plots before the fire of 19 December 1995 and that it had not been undeveloped land.

17. On 27 April 1998 the Municipality allocated the plots to S. K. and on 6 June 1998 it passed a procedural decision to allow S. K. to build on the plots in question. S. K. paid 10,710 KM for the right to use the land.

18. Already on 4 June 1998, the applicant had filed a request to the Municipality to stop any construction on the plots. However, in accordance with his permit, S. K. started construction works and built a house with a roof, water and electricity and also business premises on the plots. The applicant allegedly in due course orally addressed the Municipality several times, but never received any response from the Municipal organs in charge of the issue.

19. The applicant died in November 1998. Her daughter and heir pursues the case before all relevant bodies, including the Human Rights Chamber.

20. On 28 January 2000, upon a request of the daughter, the Cantonal Court in Bihać passed a judgment annulling the first instance procedural decision of 7 June 1997 in which the applicant was deprived of her right over the plots and which had declared that the Municipality had all rights over the plots. In its decision the Court referred to the High Representative's decision of 26 May 1999. This decision states that all socially owned land which was after 6 April 1992 *inter alia* used by

natural persons for residential purposes and business activities may not be disposed of by the authorities of the Entities or Bosnia and Herzegovina. Any such decision made by the authorities of the Entities after 6 April 1992, which affects the rights of refugees and displaced persons, shall be null and void, unless a third party has undertaken lawful construction work.

21. On 2 September 1999, the applicant's daughter initiated proceedings before the Municipal Court in Sanski Most asking for the hand-over of the plots. The daughter requested only the transfer of the plots, including the newly built house of S.K., but did not make an alternative claim for compensation in case a transfer of the plots was rejected. On 6 April 2000 the Municipal Court in Sanski Most passed a judgment rejecting the claim. The daughter then submitted an appeal to the Cantonal Court in Bihać which was refused on 21 December 2000.

22. The competent administrative body in Sanski Most awaited the outcome of the court proceedings (described in paragraph 21 above) before it took action in order to give effect to the judgment of the Cantonal Court in Bihać of 28 January 2000 annulling the procedural decision of the Municipality of 7 June 1997, as requested by the applicant.

23. On 4 May 2001 the competent municipal authority of Sanski Most passed a decision to deprive the applicant's daughter of the rights over the plots. It thereby acknowledged the fact, that S.K. had in the meantime built on the land. The decision was based on the idea, that as the land was no longer undeveloped, the applicant's daughter could not exercise the right to reconstruct a house on the plots.

24. On 24 May 2001, in accordance with the Law on Expropriation, a public hearing for the determination of the compensation due to the applicant's daughter for the loss of her rights over the plots was to be held in Sanski Most at the site of the plots in the presence of the husband of the applicant's daughter. However, as he was not duly authorized, the hearing was postponed to 13 June 2001.

25. On 13 June 2001 a new hearing was held. The husband of the daughter, this time duly authorized, explained that he did not want to discuss compensation issues but merely repeated the claim for repossession of the plots. Thus, as no compensation could be agreed upon, in accordance with Article 77 of the Law on Expropriation, the case was transferred to the Municipal Court in Sanski Most for the determination of a fair compensation. The case is still pending before the Municipal Court.

IV. RELEVANT LEGISLATION

A. The Law on Building Land

26. The Law on Building Land (Official Gazette of SRBiH, nos. 34/86, 1/90, 29/90) was applied in the former Socialist Republic of Bosnia and Herzegovina and in the Republic of Bosnia and Herzegovina and is still applied in Federation of Bosnia and Herzegovina. The Decree with the Force of Law on Amendments to the Law on Building Land (Official Gazette of RBiH, no. 3/93) was confirmed as law on the basis of the Law on Confirming the Decrees with the Force of Law (Official Gazette of RBiH, no. 13/94).

27. The Law on Building Land regulates the conditions, the manner and the time of cessation of the proprietary rights over the land in cities/towns and settlements/housing projects of urban character and other areas envisaged for residential and other construction, compensation for that land, principles of developing and utilising the building land in social ownership (Article 1).

28. The Law on Building Land provides that no right of ownership can exist over building land in a city or town (Article 4). Building land cannot be alienated from social ownership, but rights defined by law may be gained over it (Article 5). The municipality governs and disposes of building land subject to conditions provided by law and regulations issued pursuant to the law (Article 6). Rights in respect of building land shall be asserted in proceedings before a regular court if not otherwise stated by law (Article 11).

29. The former owner of building land transferred into social ownership enjoys a temporary right to use land not yet used for construction, a priority right to use land not yet built on for the purpose of construction as well as a permanent right to use building land already used for construction as long as the building continues to exist on the land (Article 21(1) and (3) and Article 40(1)).

30. The permanent right to use the land may be transferred, alienated, inherited or mortgaged only together with the building. In case of expropriation of the building, the procedural decision on expropriation shall terminate the previous owner's right of permanent use of the land under the building and of the land serving for the regular use of the building (Article 42).

31. Subject to the above-mentioned possibility of expropriation, the permanent right to use the land lasts as long as the building remains on it. If the building is removed on the basis of a decision of a competent organ because of its deterioration, or is destroyed by *vis major*, its owner has the priority right to use the land for construction on condition that an urban development plan envisages the construction of a building. The owner of a building who removes it in order to build a new one has a similar priority right to use the land, again provided that the relevant plan envisages such construction (Article 43).

32. The previous right holder over building land on which no facilities stand and whose land is taken over has the right to compensation. He acquires the right to compensation as soon as the decision of the Municipality to take over his land becomes legally valid. The compensation shall be paid by the Municipality in which the land is situated. The compensation shall be determined and paid as set out in the provisions of the Law on Expropriation (Article 44).

B. The Law on Expropriation

33. The Law on Expropriation ("OG SRBiH" no. 12/87, 38/89, 4/90 and "OG RBiH" no. 15/94) establishes the legal framework for expropriation. According to Article 44 of the Law on Building Land, the provisions concerning compensation in the Law on Expropriation are also applicable when the priority right to use the building land is taken away.

34. In Chapter VII the law sets out the regulations in regard to compensation for expropriated property. In Articles 50 to 74 the Law provides for a detailed regime on how to calculate the appropriate compensation in regard to different kinds of property, e.g., forests, orchards, fertile and infertile land or buildings. Article 49 sets out the general rule, namely that the market price shall be the determining factor in establishing the compensation to be paid for the expropriated land.

35. Articles 75 to 87 prescribe the proceedings in regard to the determination of compensation. According to Article 75, once the procedural decision on expropriation becomes effective the competent administrative organ of the municipality must without delay hold a hearing to effect an agreement on compensation for the real property. This public hearing should be prepared by an exchange of written proposals and information between all parties concerned. Article 76 states that any agreement reached must contain the form of compensation and the amount to be paid. It also must contain a time-frame within which the beneficiary has to fulfil his obligations. Both parties must sign a record of the agreement. This signed record has the force of an enforceable procedural decision.

36. Article 77 concerns the case that the parties fail to reach an agreement on the compensation. In that event the beneficiary may all the same try to pay the owner the sum offered as compensation in the expropriation proceedings. He must do so within 15 days of the offer. If the owner refuses to accept the money, the beneficiary can deposit the money with the court on behalf of the owner within 10 days after the refusal.

37. If no agreement on compensation is reached within two months of the date on which the procedural decision on expropriation becomes effective, the competent administrative organ of the municipality shall transmit the procedural decision and all the files to the competent regular court of the area in which the expropriated property is located for determination of the compensation (Article 79). The transmitted files should include evidence of any payment made by the beneficiary in

accordance with Article 77.

38. The competent court shall then decide *ex officio* in extra-judicial proceedings on the amount of compensation. The court shall take into account the amount of compensation paid in similar cases in the same area where an agreement has actually been reached, provided that an agreement was reached in a majority of cases (Article 80).

39. Should the court find that the amount deposited by the beneficiary in the expropriation procedure is not sufficient for an equitable compensation for the value of the property at the time of the deposit of the money, the court shall determine how much compensation remains to be paid (Article 81).

40. Article 85 of the Law on Expropriation provides that the beneficiary is obliged to pay the compensation to the former owner within 15 days after the court decision enters into force. In case the pervious owner refuses to accept the compensation, it must be paid into a deposit at the court within another 10 days. If the beneficiary fails to do so he must pay legal interest on the amount to the previous owner.

C. Decision of the High Representative of 26 May 1999

41. On 26 May 1999 a decision of the High Representative came into force according to which "state property including former socially-owned property may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used on April 6, 1992 ... by natural persons for residential purposes and business activities...." In addition the decision states that: "any decision referred to in the previous paragraph made by the authorities of the Entities after 6 April 1992, which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work. Any decision, agreement or transaction concluded in violation of this Decision shall be null and void."

V. COMPLAINTS

42. The applicant claims a violation of her rights under Articles 1 of Protocol No. 1 (peaceful enjoyment of possessions) to the Convention and of Article 6 of the Convention ("fair trial" "within a reasonable time"), on the ground that the respondent Party did not order a stop of the construction works on the plots for which the applicant claims a priority building right.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

43. As to the admissibility of the application, the respondent Party states that the Chamber is not competent *rationae materiae* as this case should be solved by the Commission for Displaced Persons and Refugees (hereinafter the "CRPC"). In addition, it argues that the case is inadmissible as the applicant has not exhausted the available domestic remedies because she did not apply to the CRPC.

44. In regard to the merits of the case the respondent Party claims that there has been no violation of the applicant's rights. Article 6 was not violated because, in light of the complexity of the case, the decision of the Cantonal Court in Bihać ending the administrative dispute in favour of the applicant by annulling the decision of the Municipality constitutes a decision within a reasonable time. In its observations on the compensation claim, the respondent Party states that the applicant has the right to a fair compensation in accordance with Article 44 of the Law on Building Land and the Law on Expropriation for the loss of her priority building right. If she is not satisfied with the compensation awarded she can go before the competent courts. The respondent Party is of the opinion that it cannot be held responsible for the fire and hence does not need to compensate the applicant for the value of the house.

B. The applicant

45. The applicant maintains her complaints. As to the exhaustion of local remedies, the applicant states that she was not obliged to apply to the CRPC.

VII. OPINION OF THE CHAMBER

A. Admissibility

46. In accordance with Article VIII(2) of the Agreement,

> "the Chamber shall decide which applications to accept ... and shall take into account the following criteria:
> (a) Whether effective remedies exist, and that the applicant has demonstrated that they have been exhausted ...
> ...and ..
> (d) The Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

47. In the present case, the respondent Party states that the Chamber is not competent *rationae materiae* as the case should have been dealt with by the CPRC and that in addition the applicant did not exhaust domestic remedies as she should have addressed the CRPC.

48. The Chamber notes that in the present case the applicant chose to apply to the Chamber and not to the CRPC. The applicant primarily alleges an interference with her priority building right as protected by Article 1 of Protocol No. 1 to the Convention, a right which is included among the rights and freedoms guaranteed under the Agreement. In accordance with its well-established case law (see, e.g., case no. CH/96/17, *Blentić,* decision on admissibility and merits of 3 December 1997, paragraphs 17-21 and 30-32, Decisions on Admissibility and Merits March 1996-December 1997; case no. CH/98/752 et al., *Bašić et al.,* decision on admissibility and merits of 10 December 1999, paragraphs 133-135, Decisions August-December 1999) the Chamber is competent *rationae materiae* to deal with applications concerning such alleged violations of property rights.

49. In regard to the claim that the applicant has not exhausted domestic remedies because she did not apply to the CRPC, the Chamber recalls its previous decision of 9 July 1999 in the case CH/98/659 *Pletilić and 19 others* (paragraphs 156-161, Decisions July-December 1999). In this decision the Chamber explicitly found that an applicant is not required to apply to the CRPC in order to comply with the requirement to exhaust domestic remedies set out in Article VIII(2)(a) of the Agreement. The existence of Article VIII(2)(d) of the Agreement illustrates that the requirement to exhaust "effective remedies" referred to in Article VIII(2)(a) of the Agreement does not include recourse to other Commissions established by the Agreement.

50. The Chamber further finds that no grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

51. Under Article XI of the Agreement the Chamber must next address the question whether this case discloses a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 1 of Protocol No. 1 to the Convention (right to property)

52. The applicant claims that the allocation of the plots to S. K. by the Municipality amounts to a violation of her right as protected by Article 1 of Protocol No. 1 to the Convention.

53. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

54. Article 1 of Protocol No. 1 thus contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's fundamental rights (see case no. CH/96/17, *Blentić,* decision of 5 November 1997, paragraph 31, Decisions on Admissibility and Merits 1996-1997).

a. Possessions within the meaning of Article 1 of Protocol No. 1

55. The Chamber notes that the right to use the plots for reconstruction purposes is an enforceable right with an economic value which is to be considered a "possession" of the applicant for the purposes of Article 1 of Protocol No. 1. (see case no. CH/99/2656 *Islamic Community in BiH*, decision of 6 December 2000, paragraph 111, Decisions July-December 2000). The Chamber will now examine whether in the present case the applicant had such a right.

56. Article 43 of the Law on Building Land stipulates that in case a building has not been expropriated but destroyed either by *vis major* or by decision of the competent authority in view of its poor state of repair, its owner retains a priority right to use the land for construction, on condition that a regulatory plan or urban development plan envisages the construction of a building over which one can have a property right.

57. The Chamber recalls that v*is major* may be defined as any natural occurrence or act committed by a human being which could not have been foreseen or prevented and causes damage. For a natural occurrence or an act committed by a human being to qualify as *vis major* it is necessary: (1) that the occurrence is external to the dispute between the parties but influences their legal relationship; (2) that the occurrence was impossible to predict or prevent; and (3) that the occurrence has harmful consequences either in terms of causing damage or in preventing a party from complying with its obligations (*Pravni leksikon* (legal dictionary), *Savremena administracija*, Belgrade 1970, p. 1289).

58. The destruction of the house was completely outside the control of the applicant, who lived in Banja Luka at the time of the fire. The fire broke out as the result of a chain of unpredictable and unfortunate events: the wooden beams and then the entire house caught fire probably because of a blocked chimney that caused flames to reach out of the fire-place. The cause of the destruction may therefore included in the legal term *vis major*.

59. The second condition set in Article 43 is also met: Once the house was destroyed the right to use that land for new construction depends on whether the regulatory plan or general urban plan envisages such structures. The fact that the applicant's house used to stand on the plots until 17 December 1995 and that S. K. could obtain a valid building permit for the plots illustrates the existence of such an urban plan or regulatory plan. The Chamber is therefore satisfied that the

applicant has a priority right to use the plots under Article 43 of the Law on Building Land. Moreover, also the decision of the Cantonal Court in Bihać of 28 January 2001 confirms that the applicant has such a priority building right.

60. The Chamber finds that in the present case the applicant has a right to use the plots for reconstruction purposes which is to be considered a "possession" of the applicant for the purposes of Article 1 of Protocol No. 1. The Chamber must next consider whether the respondent Party has interfered with the applicant's possessions.

b. Interference

61. The Chamber finds that the Municipality's decision of 7 June 1997 to deprive the applicant of her right to priority use, the decision of 27 April 1998 to allocate the plots to S.K., the decision of 6 June 1998 to issue a building permit in favour of S.K. and the subsequent failure of the respondent Party's authorities to stop S.K.'s construction works on the site, interfered with the applicant's enjoyment of her possessions. As a result, the applicant's priority building right became *de facto* void because S.K. erected a house on the plots. The actions of the respondent Party must therefore be considered to constitute a *de facto* deprivation of the applicant's possessions within the meaning of the second rule of Article 1 of Protocol No. 1.

62. Any deprivation of possessions must always be of public interest and subject to conditions provided for by law. The Chamber will now examine whether these conditions were followed in the case of the applicant.

c. Lack of justification

63. The Chamber notes that the procedural decision of 7 June 1997 was annulled on 28 January 2000 by the Cantonal Court in Bihać. On 4 May 2001 the competent municipal authority of Sanski Most passed a decision to deprive the applicant's daughter of the rights over the plots. The attempt to compensate the applicant's daughter for the loss of the priority building right over the plots is still pending before the Municipal Court in Sanski Most.

64. In the context of the procedural decision of 7 June 1997 to deprive the applicant of her priority building right and to transfer to the Municipality the right to reallocate the land, the Chamber recalls the decision of the High Representative of 26 May 1999. This decision declares that state property, including former socially-owned property, may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used "on April 6, 1992 by natural persons for residential purposes and business activities"... and that "any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work." The procedural decision of 7 June 1997 falls within the scope of the decision of the High Representative, in particular in light of the fact that the applicant, a refugee, expressed her wish to return to Sanski Most.

65. In addition the applicant, and respectively her daughter, have not yet received any compensation for the *de facto* deprivation of their priority right to reconstruct a house on the plots. Compensation is an essential factor when assessing whether the deprivation was justified.

66. The Chamber notes that according to Article 44 of the Law on Building Land in conjunction with the relevant Articles in the Law on Expropriation, the applicant is entitled to receive compensation. The respondent Party in its submission of 19 May 2000 admits that such a claim exists. Article 1 of Protocol No. 1 embodies the principle that a fair balance between the interests of the State and the possessor must be struck. Compensation terms are material to the assessment of whether a fair balance has been struck between the various interests at stake and whether or not a disproportionate burden has been imposed on the person who has been deprived of his possessions (see, e.g., European Court on Human Rights, *Lithgow et al. v. The United Kingdom,* judgment of 18 July 1986, Series A no. 102, paragraphs 109, 120).

67. The Chamber finds that the fact that the respondent Party took over the applicant's priority right to build on the plots without compensation and the subsequent failure of the respondent Party's authorities to act upon the request of the applicant and to stop the construction works constitute an unjustified deprivation of the applicant's right which results in a violation of the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

68. The applicant complains of a violation of her rights guaranteed by Article 6, paragraph 1 of the Convention. That provision reads, in relevant part, as follows:

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

69. The Chamber has already decided that the case primarily raises issues under Article 1 of Protocol No. 1 to the Convention. It considers that, in light of the finding of a violation of that Article, it is not necessary for it to examine the case under Article 6 of the Convention.

VIII. REMEDIES

70. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the respondent Party to remedy breaches of the Agreement which it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), and provisional measures.

71. The Chamber notes that the applicant on 10 November 1998 submitted a compensation claim. She asks to be allocated in the Sanski Most area other plots of building land of 600 square metres and in addition to be compensated 426,000 KM for the value of her house, i.e. 1,500 KM per square metre for a total surface of 284 square metres. She does, however, not claim in that submission that the respondent Party can be held directly responsible for the fire and subsequent destruction of the house. In the up-date of her compensation claim of 2 April 2000 the applicant's daugther asks in addition for 300,000 KM for lost income (60,000 KM a year), 60,000 KM for mental pain and 60,000 KM for the land taken.

72. The Chamber considers it appropriate to order the respondent Party to allocate to the applicant's daughter, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, plots of city building land in the Municipality of Sanski Most that are of equivalent size, value and quality as the plot which the applicant had a priority right to use.

73. The Chamber does not consider it appropriate to compensate the applicant in money for the loss of land in light of the fact because it will order the respondent Party to allocate plots of city building land in the Municipality of Sanski Most that are of equivalent value and quality as the plots over which the applicant had a priority right to use.

74. Lastly, the Chamber does not consider it appropriate to order the respondent Party to pay the applicant, respectively her daughter, compensation for the value of the house that burnt down and compensation for lost profit due to the fact that the applicant could not use the business premises destroyed by the fire. The responsibility of the respondent Party for the fire and the subsequent destruction of the house could not be established, nor does the applicant claim and substantiate that such a responsibility exists.

IX. CONCLUSION

77. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that there has been a violation of the applicant's right to peaceful enjoyment of her possessions as protected under Article 1 of Protocol No. 1 to the Convention, because the respondent Party, the Federation of Bosnia and Herzegovina, disregarded the applicant's priority building right without compensating the applicant for the loss of her right and allocated the land to a third party, the respondent Party thereby being in violation of Article I of the Agreement;

3. unanimously, that there is no need to examine the case under Article 6 of the Convention;

4. unanimously, to order the respondent Party to allocate to the applicant's daughter, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, a plot of city building land in the Municipality of Sanski Most of equivalent size, value and quality as the plots which the applicant had a priority right to use;

5. unanimously, to reject the remainder of the applicant's claim for compensation;

6. unanimously to order the respondent Party to report to the Chamber by 11 April 2002 on the steps taken to comply with the above order.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 April 2000)

Cases nos. CH/98/706, CH/98/740 and CH/98/776

Zijad ŠEĆERBEGOVIĆ, Josip BIOČIĆ and Nikola OROZ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in Plenary on 9 March 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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) and Article XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina living in the territory of the Federation of Bosnia and Herzegovina. They are former officers of the Yugoslav National Army ("JNA") who retired before 1992. Until the outbreak of the war in Bosnia and Herzegovina they received their pensions from the Institute for Social Insurance of Army Insurees in Belgrade (hereinafter "the JNA Pension Fund"), to which they had paid contributions during their life as active soldiers. Between February and April 1992 the applicants ceased to receive payments from the JNA Pension Fund. In September 1992 the Republic of Bosnia and Herzegovina issued a decree to the effect that pensioners of the JNA would be paid a pension amounting to 50 percent of their previous pension. This decision was confirmed by a law of the Republic of Bosnia and Herzegovina passed in June 1994 and by Article 139 of the Law on Pensions and Disability Insurance of the Federation of Bosnia and Herzegovina, which entered into force on 31 July 1998.

2. The applications raise issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights, and of discrimination in the enjoyment of the right guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced between 17 June and 16 July 1998 and registered on the date of their submission. The applicants are not represented by lawyers.

4. The Second Panel considered the three applications on 15 January 1999 and decided to transmit them to the respondent Parties for their observations on the admissibility and merits of the cases. The application by Mr. Šećerbegović was directed only against Bosnia and Herzegovina, but the Chamber decided *proprio motu* to transmit it also to the Federation of Bosnia and Herzegovina ("the Federation").

5. Observations from both respondent Parties were received on 26 March 1999. Additional observations by Bosnia and Herzegovina were received on 7 April 1999.

6. The respondent Parties' observations were transmitted to the applicants on 15 April 1999. The Chamber received written replies including a compensation claim from two of the applicants (Mr. Šećerbegović and Mr. Biočić). The Federation responded to the compensation claims on 18 June 1999. These responses were transmitted for information to the respective applicants and to Bosnia and Herzegovina.

7. On 6 September 1999 the Second Panel relinquished jurisdiction over the present cases in favour of the Plenary Chamber. On 27 September 1999 the Chamber invited the Office of the Human Rights Ombudsperson for Bosnia and Herzegovina ("Ombudsperson") to intervene as *amica curiae* in the written proceedings before the Chamber concerning these cases.

8. On 27 October 1999 the Ombudsperson informed the Chamber that she would not intervene in the proceedings before the Chamber concerning "JNA pension" cases, because this matter had been examined in her Special Report (No. 2859/99) on *The Right of the Peaceful Enjoyment of Possessions and Discrimination in the Enjoyment of this Right with Respect to Article 139 of the Law on Pension and Disability Insurance*. However, when on 25 January 2000 the Chamber invited the Ombudsperson to act as *amica curiae* at the public hearing to be held on 9 February 2000, she accepted.

9. On 9 February 2000 the Chamber held a public hearing on the admissibility and merits of the applications. The applicants appeared in person. The State of Bosnia and Herzegovina was represented by Mr. Jusuf Halilagić and the Federation of Bosnia and Herzegovina by Ms. Seada Palavrić and Ms. Branka Fetahagić. The representatives of the respondent Parties were assisted by the following experts: Mr. Miralem Viđen, Assistant to the Director of the Social Fund for Pension and Disability Insurance of Bosnia and Herzegovina, Ms. Nedžmija Resić, Chief of the Department for the

Realisation of Rights with the Social Fund for Pension and Disability Insurance of Bosnia and Herzegovina, Ms. Nasiha Ibrulj, Deputy Director of the Agency for Pension and Disability Insurance of Bosnia and Herzegovina, and Mr. Mirsad Mesić, Deputy Minister in charge of pension and disability insurance in the Federal Ministry of Social Affairs, Refugees and Displaced Persons. The Ombudsperson, acting as *amica curiae*, was represented by Mr. Nedim Osmanagić and Ms. Sanela Paripović.

10. On 18 and 24 February 2000 the Federation made additional submissions to the Chamber in reply to questions asked at the public hearing.

11. On 21 February 2000 the Ombudsperson submitted a written *amica curiae* intervention substantially restating her oral intervention at the public hearing and her Special Report of 26 May 1999 (see paragraph 8 above).

12. The plenary Chamber deliberated on the cases on 8 December 1999 and 12 January, 8 and 9 February and 7 and 9 March 2000. On the latter date it decided to formally join the applications and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The facts of the individual cases

1. Case no. CH/98/706 Zijad Šećerbegović

13. The applicant, born in 1926, is a citizen of Bosnia and Herzegovina living in Sarajevo. He fought as a partisan during the Second World War and then became a JNA officer. He retired as of 1 January 1969 with the rank of a sergeant major. Since April 1992, due to the hostilities in Bosnia and Herzegovina, the applicant has not received any payments on account of his pension from the JNA Pension Fund. In June 1992 the applicant was requested by the Pension and Disability Fund of the Republic of Bosnia and Herzegovina to submit the procedural decision determining his pension rights. Since then he has been receiving an amount equivalent to 50 percent of his original pension from the Pension and Disability Insurance Fund of Bosnia and Herzegovina (the "PIO BiH", see paragraph 38 below) in Sarajevo, as subsequently adjusted in accordance with the applicable Federation legislation. Since January 1998 the applicant has been receiving a monthly pension of 222.10 Convertible Marks (*Konvertibilnih Maraka*; KM). The applicant states that he encounters great difficulties to live decently and support his family on his pension.

2. Case no. CH/98/740 Josip Biočić

14. The applicant, born in 1935, is a citizen of Bosnia and Herzegovina living in Sarajevo. As of 1 January 1987 the applicant retired from active service in the JNA with the rank of a first class captain. In February 1992 he stopped receiving payments on account of his pension from the JNA Pension Fund. Since June 1992 he has been receiving from the PIO BiH an amount equivalent to 50 percent of his original pension, as determined on the basis of the slip of the last payment from the JNA Pension Fund and as subsequently adjusted in accordance with the applicable Federation legislation. The applicant did not receive any decision concerning this payment. At an unspecified date he requested the Sarajevo PIO BiH to issue a decision establishing the amount of the pension he is entitled to. On 28 April 1999 the applicant was informed by letter that, as a retired member of the JNA living in Bosnia and Herzegovina, he had been taken over by the PIO BiH and was entitled to receive from the Fund 50 percent of his previous pension. The applicant currently receives a monthly pension of KM 272. The applicant states that it is very difficult for him to live decently on a pension in that amount.

3. Case no. CH/98/776 Nikola Oroz

15. The applicant, born in 1928, is a citizen of Bosnia and Herzegovina living in Sarajevo. As of 1 January 1979 he retired as a JNA officer with the rank of a first class sergeant major. In March

1992 he stopped receiving payments on account of his pension from the JNA Pension Fund. Since June 1992 he has been receiving from the PIO BiH an amount equivalent to 50 percent of his original pension, as determined on the basis of the slip of the last payment from the JNA Pension Fund and as subsequently adjusted in accordance with the applicable Federation legislation. The applicant did not receive any decision concerning this payment. He currently receives a monthly pension of KM 244.10. Also this applicant states that it is very difficult for him to live decently and support his family on the basis of a pension in that amount.

B. Relevant domestic legislation

1. Legislation concerning the pension system, in particular JNA pensions

(a) Legislation of the Socialist Federal Republic of Yugoslavia and of the Socialist Republic of Bosnia and Herzegovina

(i) *Civilian pensions*

16. According to Article 281 paragraph 3 of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia ("SFRY"), the SFRY established the fundamental rights of the workers with regard to pensions and social security. This constitutional provision was implemented through the Law on Fundamental Rights of Pension and Disability Insurance (Official Gazette of the SFRY – hereinafter "OG SFRY" – nos. 23/82, 77/82, 75/85, 8/87, 65/87, 44/90 and 84/90).

17. The regulation of the pension system beyond the principles established in the SFRY law was within the competence of the republics of the SFRY, so that each Republic had its own pension legislation and its own (public) pension fund. In the Socialist Republic of Bosnia and Herzegovina ("SRBiH") pensions were governed by the Law on Pension and Disability Insurance (Official Gazette of the SRBiH nos. 38/90 and 22/91).

18. All employees, except for the military personnel of the JNA, paid into the pension fund of their republic of residence. This applied also to the employees of the ministries and agencies of the Federal Government. The pension funds in the republics worked together closely. If an individual worked and contributed into a pension fund in one republic, he or she could choose to retire in a second republic and still receive his or her pension from the first republic's pension fund through the distribution system of the second republic. If an individual lived and worked and therefore paid his contributions in more than one republic throughout his working life, upon retirement he would be entitled to receive his pension from the fund to which he had contributed most.

(ii) *Military pensions*

19. According to Article 281 paragraph 6 of the 1974 Constitution of the SFRY, the SFRY regulated and secured through the federal authorities the pension rights of the military staff of the JNA and of the members of their families.

20. The specific aspects of military pensions were regulated by the Law on Pensions and Disability Insurance of Insured Military Personnel (OG SFRY nos. 7/85, 74/87 and 20/89). This law provided for several mechanisms which rendered the pension treatment of former JNA military personnel more favourable than that of other categories. For the purpose of their pension treatment JNA pensioners were generally credited 15 months of service for every year of actual service. Moreover, the determination of the salary relevant to the calculation of the amount of the pension was more favourable than for the other categories of pensioners (in the case of the JNA pension the basis for calculation was the salary of the last December in active service, while for the other categories the basis was the average of the ten consecutive years with the highest income, now raised to the consecutive fifteen years with the highest income by the 1998 Federation Law on Pension and Disability Insurance).

21. The JNA military employees paid their contributions to and received their pensions from the JNA Pension Fund. This was the only pension fund existing at the Federal level.

(b) Legislation of the Republic of Bosnia and Herzegovina

22. The SFRY Law on Pensions and Disability Insurance of Insured Military Personnel was taken over as a law of the Republic of Bosnia and Herzegovina by the Decree with force of law on the Adoption and the Application of Federal Laws applicable in Bosnia and Herzegovina as Republic Laws (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – no. 2/92).

23. Article 5 of the Decree with Force of Law on Pension and Disability Insurance During the State of War or Immediate Threat of War (OG RBiH nos. 16/92 and 8/93) of 18 September 1992, however, provided:

> "(1) The Fund decides on the right to pension and disability insurance of the military insurees who are citizens of the Republic of Bosnia and Herzegovina and who reside within the territory of the Republic of Bosnia and Herzegovina.
>
> (2) The pensions of military insurees are paid in the amount of 50 percent of the pension as determined in accordance with the Law on Pensions and Disability Insurance of Insured Military Personnel and are adjusted to the amount and in the way established by the Law on Fundamental Rights of Pension and Disability Insurance and the Law on Pension and Disability Insurance.
>
> (3) The pensions of military insurees are paid in the amount and in the way determined in paragraph 2 of this Article, starting with April 1992."

24. This provision was amended by the Law on the Amendments and Changes to the Decree with Force of Law on Pensions and Disability Insurance During the State of War or Immediate Threat of War (OG RBiH no. 13/94) which entered into force on 9 June 1994. Article 2 of this Law reads:

> "Article 5 is amended as follows:
>
> 'Pensions of Insured Military Personnel of the former JNA who are citizens of the Republic and who reside within the territory of the Republic (hereinafter "Insured Military Personnel") will be paid 50 percent of the pension established under the Law on Pensions and Disability Insurance of Insured Military Personnel.
>
> Where the pension of Insured Military Personnel established under the Law on Pensions and Disability Insurance of Insured Military Personnel is lower than the guaranteed pension established under the Law on Pensions and Disability Insurance (hereinafter "guaranteed pension"), pensions will be paid in the amount established under the Law on Pensions and Disability Insurance of Insured Military Personnel.
>
> Where the pension established under the Law on Pensions and Disability Insurance of Insured Military Personnel is higher then the guaranteed pension, and by the application of paragraph 1 of this Article is an amount lower then the guaranteed pension, the amount of the guaranteed pension will be paid.'"

(c) Legislation of the Federation of Bosnia and Herzegovina

25. Article III(1) of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement) establishes the matters that are the responsibility of the institutions of (the State of) Bosnia and Herzegovina. Article III(3)(a) provides that all governmental functions and powers not expressly assigned in the Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities, i.e. the Federation of Bosnia and Herzegovina and the Republika Srpska. The pension system is not among the matters listed in Article III(1).

26. On 31 July 1998 the Law on Pensions and Disability Insurance of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – no. 29/98) came into force. Article 4 establishes:

> "Pension and disability insurance shall be funded, in accordance with this law, from contributions and other resources".

27. Article 139 is the provision concerning JNA pensioners. It reads:

> "To the military insured members of the former JNA, who are citizens of Bosnia and Herzegovina residing within the territory of the Federation, the pension will be paid in the amount of 50 percent of the amount of the pension determined in accordance with the rules on pension and disability insurance of the military insured in force until the day of coming into force of this law".

28. Article 140 provides for the cases in which the pension as determined under the preceding Article is below the guaranteed minimum pension. It reads:

> "If the pension of the military insured of former JNA, determined in accordance with the military insured rules, is below the minimum guaranteed pension determined in the Article 72 of this law, the pension will be paid in the amount defined in accordance with the military insured rules.
>
> If the pension determined in accordance to the military insured rules amounts to more than the minimum pension guaranteed by this law, but is below the guaranteed minimum pension after application of paragraph 1 of Article 139 of this law, the pension will be paid in the amount of guaranteed minimum pension determined by this law."

29. Article 141 provides:

> "If the holder of the insurance, e.g. the insured, does not have at his disposal the records on his salary in order to determine the pension basis of the military insured of the former JNA, the pension will be determined on the basis of the average pension of the pensioners holding the same rank as the insured pension being determined."

30. Article 148 of the law envisages that separate legislation shall provide for compensation for the difference between the amounts pensioners were entitled to and the amounts actually paid from 1992 to the entry into force of the law, i.e. the arrears accumulated within the pension system in that period. On 23 October 1998 the Law on Claims in the Process of Privatisation on the Ground of Difference in Payment to the Holders of Pension and Disability Insurance Rights (OG FBiH no. 41/98) entered into force. This law entitles pensioners to receive certificates to be used in the privatisation process for the part of their pension that has remained unpaid. At the public hearing the Federation clarified that the 50 percent of the original pension that was not paid out to the JNA pensioners since June 1992 does not constitute an arrears owed to them for the purposes of this law. The applicants are therefore not entitled to certificates to use in the privatisation process on account of the 50 percent of their JNA pension that was not paid out to them.

31. As to the pension treatment of those employees of the JNA who subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation, and who have retired or will retire after 30 July 1998, the Federation submits that their pension is determined in full accordance with the Federation Law on Pension and Disability Insurance. For these pensioners, the length of the service in the JNA before 6 April 1992 is taken into account in order to determine whether they fulfil the conditions to be entitled to a pension, but not for the purposes of calculating the amount to which they are entitled.

32. Those former JNA employees who subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation, and who retired before 30 July 1998, receive credit for the time served in the JNA also for the purposes of calculating the amount to which they are entitled.

2. The Law on Administrative Proceedings

33. According to Article 68 of the SRBiH Law on Pension and Invalidity Insurance (see paragraph 17 above), rights from the pension and invalidity insurance are to be exercised, unless otherwise provided, in accordance with the Law on Administrative Proceedings. This provision was taken over into Article 7 of the Federation Law on Pension and Invalidity Insurance.

34. Under Article 216 paragraph 2 of the Law on Administrative Proceedings (OG FBiH no. 2/98), the competent administrative organ has to issue a decision within 60 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit (appeal against "silence of the administration").

3. The Law on Administrative Disputes

35. Article 1 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of administrative acts concerning rights and obligations of citizens and legal persons.

36. Article 22 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

C. General factual background concerning the pension system in Bosnia and Herzegovina

37. The following information is based on the submissions of the respondent Parties, on the report "Falling Through the Cracks: the Bosnian Pension System and its Current problems" issued by the Organization for Security and Co-operation in Europe (OSCE) – Mission to Bosnia and Herzegovina, and on statistical data contained in the economic *Newsletter* of the Office of the High Representative (OHR) of February 2000.

38. During the war, the Pension and Disability Insurance Fund of the Republic of Bosnia and Herzegovina split into three separate funds, headquartered in Sarajevo, West Mostar and Pale, each fund becoming exclusively competent for the pensioners living within its region. The 1998 Federation Law on Pension and Disability Insurance provides for the continued existence of two pension funds within the Federation on a transitional basis (Article 5 of the Law). Unless otherwise specified, the Chamber has in the following disregarded the separate existence of two funds within the Federation, as it is not relevant to its decision and as it was mostly ignored by the Parties in their submissions. All three applicants receive payments from the fund headquartered in Sarajevo, and the Chamber shall refer to it as the Pension and Disability Insurance Fund of Bosnia and Herzegovina ("PIO BiH").

39. The assets and obligations of the JNA Pension Fund in Belgrade are among the subjects of the Yugoslav succession negotiations. The Chamber has not received any information as to when the negotiations on this issue are expected to be concluded, or whether they actually have at all begun.

40. It appears, however, that during and after the war the JNA Pension Fund continued to pay pensions to the JNA pensioners living in the Republika Srpska. Moreover, in the course of the public hearing, the representatives of the Federation stated that there had been numerous cases of "double dipping" by JNA pensioners living in the Federation. These JNA pensioners were allegedly receiving payments from the PIO BiH in Sarajevo under Article 5 of the 1992 Decree and Article 139 of the 1998 Law on Pension and Disability Insurance, and at the same time collected their pension (in Yugoslav dinars) from the JNA Pension Fund in Belgrade through members of their immediate family duly authorised to that effect, until the PIO BiH requested and received from the JNA Pension Fund a list of its beneficiaries. It has not been argued that the applicants were involved in any "double dipping" incidents.

41. The representatives of the respondent Parties also brought to the Chamber's attention the case of a JNA pensioner living in Grbavica, a part of Sarajevo that was under control of the Bosnian Serb authorities during the war and until March 1996, when it was integrated into the Federation

territory. This JNA pensioner received his full pension in Yugoslav dinars from the JNA Pension Fund in Belgrade until May 1999, when he asked to be registered with the PIO BiH, as the value of his full pension converted into KM was by that time lower than the 50 percent of his pension he is now receiving from the PIO BiH.

42. According to the Federation, approximately 1,500 JNA pensioners are currently receiving pension payments from the Federation. The average monthly pension of the JNA pensioners, i.e. the average benefit paid to JNA pensioners in accordance with Article 139 of the Federation Law on Pension and Disability Insurance, amounts to about KM 325, according to the information submitted at the public hearing. This is about 80 percent higher than the average of the pensions paid to all other categories of pensioners, which amounts to KM 180. According to the representatives of the Federation, the maximum monthly pension paid by the PIO BiH amounts to KM 613.

43. The economic *Newsletter* published by the OHR in February 2000 contains the following data concerning the income distribution structure of the beneficiaries of the Sarajevo-based PIO BiH:

Monthly amount of the pension in KM	No. of pensioners
less than 117	57,829
117-170	67,347
170-190	18,871
190-250	41,867
250-400	30,386
400-550	4,008
550-613	800
Total no. of pensioners:	221,108

44. According to information provided by the Federation, in September 1999 the average pension paid by the PIO BiH under the 1998 Law on Pension and Disability Insurance to former JNA personnel that subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation, amounted to KM 573.50.

45. According to the respondent Party, one of the conditions imposed by the World Bank for its continued financial support is that the PIO BiH may not indebt itself, which also means that it may not receive means from sources different than the contributions paid. The gap between contributions collected and pensions due, however, is around 4 million KM per month. On 24 February 2000 the Federation stated that the PIO BiH is currently paying the pensions due in September 1999.

IV. COMPLAINTS

46. The applicants allege a violation of their right to receive the full pension in accordance with the procedural decisions on their retirement. They also complain that they are being discriminated against on the ground that they served in the JNA.

V. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

1. As to admissibility

47. Bosnia and Herzegovina asks the Chamber to declare the applications inadmissible on the ground that the applicants failed to avail themselves of the available domestic remedies. It points to the possibility to appeal against administrative decisions under the Law on Administrative Proceedings and to initiate court proceedings under the Law on Administrative Disputes, if no favourable decision is obtained in the administrative appeals proceedings.

48. Bosnia and Herzegovina also asks the Chamber to declare the application inadmissible on the ground of incompetence *ratione temporis* in combination with the ground of non-compliance with the six-month time-limit set forth in Article VIII(2)(a) of the Agreement. It appears to argue that the Chamber lacks competence to examine the complaints because the alleged violation of the applicants' rights began in June 1992, before the entry into force of the Agreement. At the same time, Bosnia and Herzegovina acknowledges that the alleged violation consists of a continuing situation and concludes that the applicants should have submitted their complaints at the latest six months after the entry into force of the Agreement.

49. At the public hearing, Bosnia and Herzegovina furthermore submitted that pensions are not among the matters within the responsibilities of the Institutions of the State of Bosnia and Herzegovina listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement), and that it can therefore not be held responsible for the matter complained of by the applicants.

2. As to the merits

50. Bosnia and Herzegovina has not formally made submissions on the merits of the applications. It has argued, however, that at the beginning of the war in Bosnia and Herzegovina the Republic Government was faced with the need to ensure that the JNA pensioners living in its territory, who had ceased to receive their pension payments from the JNA Pension Fund in Belgrade, had means to survive. In order to determine the amount these JNA pensioners should receive, the fact that they were pensioners of the JNA Pension Fund was taken into account on the one hand, and the average pension of Bosnian citizens on the other hand. It was accordingly decided to pay the JNA pensioners 50 percent of the pension to which they were entitled from the JNA Pension Fund, an amount at that time still 70 percent higher than the average pension in Bosnia and Herzegovina.

51. Bosnia and Herzegovina further submits that once the succession to the property of the SFRY, among it the assets of the JNA Pension Fund will be completed, JNA pensioners who are citizens of Bosnia and Herzegovina shall again receive the full pension to which they are entitled under the SFRY Law on Pension and Disability Insurance of the Military.

B. The Federation of Bosnia and Herzegovina

1. As to admissibility

52. As Bosnia and Herzegovina, the Federation asks the Chamber to declare the applications inadmissible on the ground that they are outside the Chamber's competence *ratione temporis*. The Federation argues that, as the applications were lodged before the entry into force of the Federation Law on Pension and Disability Insurance on 31 July 1998, they must be considered to be directed against the Decree of 18 September 1992. Therefore, as the Agreement cannot be applied retroactively, the Chamber has no competence to examine the matter.

53. It is further argued that the Decree of 18 September 1992 has to be considered the "final decision" in the applicants' cases for the purpose of Article VIII(2)(a) of the Agreement. Accordingly, the applicants failed to submit their cases within six months of such final decision and the applications are inadmissible on that ground, too.

54. As the other respondent Party, the Federation also argues that the applicants have not exhausted the available domestic remedies. It acknowledges that the applicants did not receive any procedural decision determining the reduced amount of their pension. It argues, however, that, according to Article 5 of the Law on Pension and Disability Insurance, the applicants should have received a procedural decision determining the amount of their pension and that, according to Article 68 of the same law, disputes concerning pension rights are to be solved in accordance with the Law on Administrative Proceedings. Therefore, it is argued that in the absence of an administrative decision determining the reduction of their pension, the applicants should have availed themselves of the remedies against silence of the administration (Article 216 of the Law on Administrative Proceedings). If no favourable decision had been obtained in the administrative appeals proceedings,

they could have initiated court proceedings under the Law on Administrative Disputes (against an unfavourable decision as well as against persistent silence of the administration).

2. As to the merits

55. With regard to the merits of the complaints, the Federation argues that, at least until the succession negotiations are concluded, the applicants have a pension claim arising from their service in the JNA against the JNA Pension Fund in Belgrade, which is still functioning and paying pensions to the JNA pensioners residing in the Federal Republic of Yugoslavia, in the Republika Srpska and, it appears, in some instances also in the Federation. As the applicants never paid contributions to the PIO BiH, this fund does not have any documents relating to their employment and contribution history. The amount to be paid to the applicants was determined on the basis of the slip relating to the last pension payment received from Belgrade. Accordingly, the applicants are not, even currently, insurees of the PIO BiH. The Federation concludes that the applicants do not have a claim against the PIO BiH or against the Federation that constitutes a possession within the meaning of Article 1 of Protocol No. 1 to the Convention.

56. Should the Chamber find that the applicants do have a claim against the PIO BiH or against the Federation that constitutes a possession within the meaning of Article 1 of Protocol No. 1, the Federation submits that the reduced payment is justified in the light of the extremely difficult financial situation of the PIO BiH, which is not even in a position to pay the full pension to its own insurees, and of the greatly privileged pension treatment the applicants enjoyed under the SFRY legislation. There would, accordingly, be an overriding public interest justifying the interference, if there is any, with the applicants' pension rights.

57. As to the complaint of discrimination, the Federation argues that the payment to the JNA pensioners who reside in the Federation of only 50 percent of their original pension is fully justified in the light of the above considerations. Namely, that these pensioners contributed to the JNA Pension Fund, and not to the PIO BiH, that the PIO BiH is in serious financial difficulties and can hardly pay the full pensions to its insurees, and, finally, that notwithstanding the 50 percent reduction the average pension of a JNA pensioner is still 75 percent higher than the average pension paid by the PIO BiH. The Federation concludes that there is no discrimination against the applicants.

C. The applicants

1. As to admissibility

58. The applicants state that they never received a procedural decision determining the amount of their pension as reduced of 50 percent against which they could have appealed. Mr. Biočić stresses that he requested from PIO BiH a procedural decision determining his pension rights, but only received a letter in reply. The applicants therefore conclude that no remedy against the reduction was available to them.

2. As to the merits

59. The applicants confirm their complaints. They submit that they should not be put at a disadvantage for having stayed in Sarajevo during and after the war and that they should not have to bear the consequences of the delays in the succession negotiations.

D. The Ombudsperson

60. The Chamber has considered both the Ombudsperson's Special Report (No. 2859/99) on *The Right of the Peaceful Enjoyment of Possessions and Discrimination in the Enjoyment of this Right with Respect to Article 139 of the Law on Pension and Disability Insurance* of 26 May 1999 ("the Special Report") and her oral and written *amica curiae* submissions of 9 and 21 February 2000 respectively. In the proceedings that led to the issuing of the Special Report, the Ombudsperson could not take into account any arguments made by the respondent Party, as the Federation, which was the only respondent Party in those proceedings, failed to submit observations. In her *amica*

curiae submissions to the Chamber the Ombudsperson chose not to address the arguments made by the respondent Parties, with the exception of the Federation's claim that the applicants had failed to exhaust the available domestic remedies.

1. As to admissibility

61. The Ombudsperson states that no effective remedy against the reduction in the pension payments was available to the applicants. She submits that, as there was no dispute as to the original full amount of the applicants' pensions, there was no issue to be determined in the course of administrative proceedings. Regarding the possibility to initiate court proceedings in order to obtain payment of the pensions in the full amount, the Ombudsperson submits that no success was reasonably to be expected from such action, as the courts would have applied the law. On the other hand, she adds, the legal system of the Federation leaves no possibility to the applicants, as individuals, to challenge a law.

2. As to the merits

62. The Ombudsperson submits that, by taking over the SFRY Law on Pension and Disability Insurance with no changes except for the 50 percent reduction of the amount to be paid to the JNA pensioners, the Republic of Bosnia and Herzegovina and, as of 14 December 1995, the Federation fully accepted the rights of the JNA pensioners under this law and their corresponding obligation. Therefore, the 50 percent reduction constitutes a deprivation of possessions of the applicants. According to the Ombudsperson, this deprivation is rendered particularly serious by the fact that it has lasted already seven years (at the time of her Special Report) and that the applicants had no possibility to protect their acquired pension rights. She concludes that no fair balance was struck between the reasons for the measure and the right of the JNA pensioners and that therefore Article 139 of the Federation Law on Pension and Disability Insurance violates the JNA pensioners rights guaranteed by Article 1 to Protocol No. 1.

63. The Ombudsperson further notes that the reduction at issue does not affect the pensions of the military pensioners of the Army of the Republic of Bosnia and Herzegovina, of the Army of the Federation of Bosnia and Herzegovina or of the civilian pensioners. The Ombudsperson recalls that in the proceedings before her Office no reasons for this differential treatment were adduced. She therefore concludes that the JNA pensioners are being discriminated against in the enjoyment of their right to peacefully enjoy their possessions on the ground of their status. This opinion was confirmed during and after the public hearing.

VI. OPINION OF THE CHAMBER

A. Admissibility

64. Before considering the cases on their merits the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(c) the Chamber shall dismiss any application which it considers incompatible with the Agreement. Under Article VIII(2)(a) the Chamber shall consider whether effective remedies exist and the applicants have demonstrated that they have been exhausted, and whether the application was submitted within six months of the final decision in the applicants' cases.

1. Competence *ratione temporis*

65. The Chamber will first address the question to what extent it is competent *ratione temporis* to consider the present cases, bearing in mind that according to generally accepted principles of international law and to its own case-law, it is outside its competence to decide whether events occurring before the coming into force of the Agreement on 14 December 1995 involve violations of human rights (see e.g. case no. CH/96/1, *Matanović*, decision on the merits delivered on 6 August 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997).

66. Bosnia and Herzegovina argues that the only action it has taken affecting the applicants is the enactment of the Decree of 18 September 1992 and of the Law of 9 June 1994. The Federation argues that, as the applications were submitted before 31 July 1998, the date of entry into force of the Federation Law on Pension and Invalidity Insurance, they can only be directed against the 1992 Decree. Both respondent Parties conclude that the applications are outside the Chamber's competence *ratione temporis*.

67. The Chamber recalls, however, that the respondent Parties are under an obligation to ensure that their legal system is in conformity with the obligations arising from the Convention (see Eur. Court H.R., *De Becker v. Belgium* judgment of 27 March 1962, Series A no. 4, pp. 24-26). The Chamber is therefore competent to examine whether the application of legislation enacted before 14 December 1995, in the case at hand the application of the Decree of 18 September 1992, has given rise after 14 December 1995 to a violation of the applicants' rights guaranteed by the Agreement. Moreover, the situation complained of by the applicants has been confirmed by Article 139 of the Federation Law on Pension and Disability Insurance, which entered into force on 31 July 1998. The objections to the Chamber's competence *ratione temporis* to examine the applications are therefore rejected.

2. Competence *ratione personae*

68. The applicant Mr. Šećerbegović directed his application against Bosnia and Herzegovina. The applicants Mr. Biočić and Mr. Oroz directed theirs against both Bosnia and Herzegovina and the Federation. The Chamber transmitted all three cases to both respondent Parties.

69. The Chamber notes that pensions are not among the matters within the responsibilities of the Institutions of the State of Bosnia and Herzegovina listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement). However, until 31 July 1998, when the Federation Law on Pensions and Disability Insurance entered into force, the payment to the applicants of 50 percent of their JNA pension was due to legislation enacted by organs of the Republic of Bosnia and Herzegovina, which, according to Article I paragraph 1 of the Constitution, is to "continue its legal existence under international law as a state", henceforth named "Bosnia and Herzegovina".

70. The Chamber recalls that also in the "JNA apartment cases" it was called upon to decide whether legislation enacted by organs of the Republic of Bosnia and Herzegovina in subject matters that under the Constitution are within the competence of the Entities, gives rise to responsibility of Bosnia and Herzegovina (see cases nos. CH/96/3, 8 and 9, *Medan, Baštijanović and Marković*, decision on the merits delivered on 7 November 1997, paragraphs 44-47, Decisions on Admissibility and Merits 1996-97). However, in those cases the former institutions of the Republic, including the legislative institutions, had continued to operate after the entry into force of the State Constitution, while the legislative organs provided for in the Constitutions of both the State and the Federation had not yet been established. On 22 December 1995 the Presidency of the Republic had issued the Decree which annulled the applicants' purchase contracts. This Decree was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 16 January 1996. The Chamber found that in so far as the former institutions of the Republic, including the legislative institutions, continued to operate, they functioned as institutions of the continuing State of Bosnia and Herzegovina, which was therefore responsible for their acts. It concluded that since institutions of the State were responsible for passing the legislation which annulled the applicants' contracts, the State was responsible for the violations of Article 1 of Protocol No. 1 which the Chamber found (see *Medan, Bastijanović and Marković*, paragraph 47).

71. In the present case, however, the State of Bosnia and Herzegovina has not taken any legislative or administrative action affecting the applicants, nor have institutions of the Republic of Bosnia and Herzegovina done so since the entry into force of the Agreement. The Chamber therefore concludes that no responsibility for the matters complained of can attach to Bosnia and Herzegovina and that it has no competence *ratione personae* to continue consideration of the applications insofar as they are directed against Bosnia and Herzegovina.

3. Exhaustion of domestic remedies and compliance with the six months rule

72. Both respondent Parties ask the Chamber to declare the application inadmissible under Article VIII(2)(a) of the Agreement. The Federation, in particular, argues that, according to Article 5 of the Law on Pension and Disability Insurance, the applicants should have received a procedural decision determining the amount of their pension. The Federation further argues that, according to Article 68 of the Law on Pension and Disability Insurance, disputes concerning the pension rights are to be solved in accordance with the Law on Administrative Proceedings. In the absence of an administrative decision determining the reduction of their pension, the applicants should have availed themselves of the remedies against silence of the administration (Article 216 of the Law on Administrative Proceedings). If no favourable decision had been obtained in the administrative appeals proceedings, they could have initiated court proceedings under the Law on Administrative Disputes (against an unfavourable decision as well as against persistent silence of the administration).

73. The Ombudsperson argued:

> "The question arises whether the administrative proceedings invoked by the Governments could be considered as remedies which the applicants could be reasonably expected to pursue. The Ombudsperson notes that the applicants' rights to their pensions (including the model of accounting the particular basis of the pensions) had already been determined by the relevant competent authorities. The wording of Article 5 of the Law on Pension and Disability Insurance ('Official Gazette RBiH' 16/92, 8/93 and 13/94) and Article 139 of the Law on Pension and Disability Insurance ('Official Gazette FBiH' 29/98) does not disclose any doubts in that respect. Consequently, it appears that there was no dispute in relation to the full amounts of the applicants' pensions and, therefore, no issue left to be determined under the Law on Administrative Proceedings. Assuming that the applicants had initiated civil proceedings before the court seeking payment of their pensions in full amount, no success appears to be obtainable since the court would apply the Law. On the other hand, domestic legal system left no possibility to the applicants, as individuals, to challenge the Law."

74. The Chamber agrees in substance with the Ombudsperson's argument as to the practicability for individuals to challenge the constitutionality of domestic laws. It also notes that the respondent Parties have not submitted to the Chamber a single case of a JNA pensioner who would have availed himself successfully of the remedies indicated by them. On the contrary, the applicant Mr. Biočić has attempted without success to obtain a procedural decision from the PIO BiH determining the amount of his pension. The Chamber therefore concludes that there was no domestic remedy the applicants could be requested to pursue for the purposes of Article VIII(2)(a) of the Agreement.

75. The respondent Parties further submit that the applications are inadmissible because the applicants did not lodge their applications within six months of the entry into force of the Law of 18 September 1992, which, according to the Federation, was the final decision in their case, or, according to Bosnia and Herzegovina, within six months of the entry into force of the Agreement.

76. The Chamber notes that the complaints in the present cases concern a situation that has lasted for nearly eight years and is still continuing. In such a case the six-month period starts to run from the moment when the situation complained of ceases to exist (see the European Commission of Human Right's decision of 19 January 1989 in *Macedo v. Portugal*, application no. 11660/85, D.R. 59, p. 85). This has not yet occurred and the six-month time-limit is therefore inapplicable in the applicants' cases and the objection is rejected.

4. Conclusion as to admissibility

77. The Chamber concludes that the applications are admissible insofar as they are directed against the Federation, while they are dismissed as incompatible *ratione personae* with the Agreement insofar as they are directed against Bosnia and Herzegovina.

B. Merits

78. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above indicate a breach by the Federation of its obligations under the Agreement. In terms of 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 and the other instruments listed in the Appendix to the Agreement.

79. Under Article II of the Agreement, the Chamber has competence 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 international agreements listed in the Appendix (including the Convention).

80. The applicants complain that the respondent Parties violate their rights guaranteed under the Agreement by the failure to pay them their JNA pension in the full amount. The Chamber shall first consider this complaint under Article II(2)(a) of the Agreement and Article 1 of Protocol No. 1 to the Convention, protecting the right to one's possessions. The Chamber shall secondly consider the complaint as a complaint of discrimination in the enjoyment of the right to social security, under Article II(2)(b) of the Agreement and Article 9 of the ICESCR.

1. Article 1 of Protocol No. 1 to the Convention

81. The applicants complain that the fact that they receive only 50 percent of their original JNA pension constitutes a violation of Article 1 of Protocol No. 1 to the Convention, which reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

82. The Chamber notes that the European Commission of Human Rights has held that where a person has contributed to an old age pension fund, this may give rise to a property right in a portion of such a fund, and a modification of the pension rights under such a system could in principle raise an issue under Article 1 of Protocol No. 1 to the Convention. The Commission has, however, also held that the Convention does not guarantee a right to a specific social welfare benefit (see, e.g., *Müller v. Austria*, decision of 1 October 1975, application no. 5849/72, D.R. 3, p. 31; and *Tricković v. Slovenia*, application no. 39914/98, decision of 27 May 1998). In particular, the Commission has stressed that there is no right to receive social welfare benefits in a specific amount. The European Court of Human Rights has stated that the right to a certain social security benefit – in so far as it is provided for in the applicable legislation – is a pecuniary right for the purposes of Article 1 of Protocol No. 1 (Eur. Court H.R., *Gaygusuz v. Austria*, judgment of 31 August 1996, Reports of Judgments and Decisions 1996-IV, paragraph 41).

83. The applicants argue that they are entitled to receive from the PIO BiH the full amount of their JNA pension. In her Special Report the Ombudsperson found that Article 139 of the 1998 Federation Law on Pension and Disability Insurance deprives the applicants of a possession, namely the half of their JNA pension that is not paid out to them by the PIO BiH.

84. The Chamber notes that the language both of Article 5 of the 1992 Decree, as amended by Article 2 of the 1994 Law, and of Article 139 of the 1998 Law might be interpreted in the sense that the Republic of Bosnia and Herzegovina first, and then the Federation, took over the obligation of the JNA Pension Fund to pay the applicants' JNA pensions and then decided to pay only 50 percent of the amount due. The amended Article 5 of the 1992 Decree (see paragraph 24 above) provided:

> "Pensions of Insured Military Personnel of the former JNA who are citizens of the Republic and who reside within the territory of the Republic (...) will be paid 50 percent of the pension established under the Law on Pensions and Disability Insurance of Insured Military Personnel".

Article 139 of the 1998 Law (see paragraph 27 above) reads:

> "To the military insured members of the former JNA, who are citizens of Bosnia and Herzegovina residing within the territory of the Federation, the pension will be paid in the amount of 50 percent of the amount of the pension in accordance to the rules on pension and disability insurance of the military insured being in force until the day of coming into force of this Law".

85. The Chamber further notes that the letter by the PIO BiH to Mr. Biočić of 28 April 1999 informed the applicant that, as a retired member of the JNA living in Bosnia and Herzegovina, he had been taken over by the PIO BiH and was entitled to receive from that fund 50 percent of his previous pension (see paragraph 14 above).

86. The Chamber recalls that at the public hearing the representative of Bosnia and Herzegovina explained that the decision to pay JNA pensioners a pension in the amount of 50 percent of the pension they were entitled to under the Law on Pensions and Disability Insurance of Insured Military Personnel was taken in order to ensure that these persons, who at the outbreak of the war had ceased to receive their pension payments, had the means to survive. The Federation has repeatedly argued that Article 5 of the 1992 Decree and Article 139 of the 1998 Law were enacted for "humanitarian reasons", and not because the Republic of Bosnia and Herzegovina or the Federation were under an obligation to pay the JNA pensions to their citizens or residents.

87. Both respondent Parties have stressed that the assets of the Belgrade JNA Pension Fund are among the subjects of the succession negotiations, and that until the issue of succession to those assets is solved, the applicants maintain a claim for their pensions towards the JNA Pension Fund.

88. The Chamber notes that the applicants have not paid any contributions to the PIO BiH in Sarajevo, nor to any other pension fund in the Republic of Bosnia and Herzegovina or in the Federation. They had no legal relation to the PIO BiH before the issuing of the 1992 Decree with Force of Law on Pension and Disability Insurance During the State of War or Immediate Threat of War. Moreover, the competent authorities of the Federation do not have access to the employment record of the former JNA employees, so that they would not be in a position to determine the entitlement of these pensioners and the amount to which they are entitled under provisions - different from Articles 139 to 141 - of the Federation Law on Pension and Disability Insurance.

89. The Chamber concludes that the applicants have no claims against the PIO BiH or against the Federation beyond those attributed to them by the 1992 Decree and 1998 Law, which could be regarded as a possession under Article 1 of Protocol No. 1 to the Convention. The applicants' claim towards the JNA Pension Fund, which is not at issue before the Chamber, appears to remain untouched by the mentioned legislation. Accordingly, the Chamber concludes that the applications do not reveal any interference with the applicants' possessions by the Federation and, accordingly, no violation of Article 1 of Protocol No. 1 to the Convention.

2. Discrimination in the enjoyment of the right to social security guaranteed by Article 9 of the ICESCR

90. The applicants complain that they are the only category of pensioners who suffers a 50 percent reduction of the pension payments. The applicant Mr. Šećerbegović expressly alleges that this different treatment is due to the fact that former members of the JNA are perceived as "enemies" in present Bosnia and Herzegovina. The applicants also complain that their pensions have been reduced while those of the pensioners of the Army of the Federation are, so they assert, particularly privileged.

91. The Ombudsperson found in her Special Report that under Article 139 of the Federation Law on Pension and Disability Insurance the JNA pensioners were treated differently from the military pensioners of the Army of the Republic of Bosnia and Herzegovina, of the Army of the Federation and from the civilian pensioners. She further found that this difference in treatment was not based on an objective and reasonable justification and concluded that the JNA pensioners were being discriminated against on the ground of their status.

92. The Chamber has considered the applicants' complaints as allegations of discrimination in the enjoyment of the right guaranteed by Article 9 of the ICESCR, which reads:

> "The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance."

93. 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 relevantly 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 of proportionality between the means employed and the aim sought to be realised (see case no. CH/97/67, *Zahirović*, decision on admissibility and merits delivered on 8 July 1999, paragraph 120, Decisions January-July 1999).

94. In accordance with the approach outlined above, the Chamber has considered whether the other categories of pensioners mentioned by the applicants and the Ombudsperson constitute "others in the same or relevantly similar situations". As to the civilian pensioners, the Chamber is of the opinion that they are not in a relevantly similar position. Firstly, the civilian pensioners paid their contributions into the PIO BiH and thereby acquired a right to a pension from that fund in accordance with the provisions of the SRBiH Law on Pension and Disability Insurance, as subsequently taken over and amended by the Republic of Bosnia and Herzegovina and the Federation. Secondly, the JNA pension scheme contained mechanisms that rendered it unique and very favourable. The Chamber recalls that JNA pensioners were generally credited 15 months of service for every year of actual service for the purposes of the calculation of the years of service attained. Moreover, the determination of the salary relevant as basis for the calculation of the amount of the pension was significantly more favourable than for the other categories of pensioners (see paragraph 20 above). In the light of these considerations, the Chamber concludes that no issue of differential treatment of the applicants, and therefore no issue of discrimination in the enjoyment of the right to social security, arises in relation to the civilian pensioners, as these do not constitute a relevantly comparable group.

95. The Chamber additionally notes that the pensions the applicants receive from the PIO BiH are higher than the average pension paid by that fund to its insurees, by 23 percent in the case of Mr. Šećerbegović, by 35 percent in the case of Mr. Oroz and of 51 percent by Mr. Biočić. Considering that the applicants did not contribute to the PIO BiH, and considering that the fund is not able to meet its obligations towards its insurees (see 45 above), the Chamber does not find that the applications could reveal any possible discrimination in the enjoyment of the right to social security, even if the civilian pensioners were to be considered a comparable group.

96. The situation is different in relation to the former JNA members who retired after having served in the Army of the Republic of Bosnia and Herzegovina or the Army of the Federation, in particular those who retired before 30 July 1998 (see paragraphs 31 and 32 above). The latter category apparently receives the full pension as established under the Federation Law on Pension and Disability Insurance and full credit is given for the time served in the JNA, both for the purpose of the determination of the entitlement and of the amount of the pension to which they are entitled. The Chamber notes that the mechanism by which this category's entitlement to pension is calculated has not been completely clarified. The fact, however, that the average pension of the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation amounts to KM 573.50, whereas the average pension of the JNA pensioners is KM 325, the maximum pension obtainable being KM 613, leaves little doubt as to the favourable treatment of these pensioners.

97. These statistical data show that the veterans of the war in Bosnia and Herzegovina are put in a position of considerable economic advantage in comparison to the entire remaining population of the Federation, and not only as compared to members of the JNA who retired before 1992 and did not join the Army of the Republic of Bosnia and Herzegovina, the HVO or the Army of the Federation. Furthermore, the JNA pensioners who joined these armed forces served either the government of the Republic of Bosnia and Herzegovina or of the Federation and thereby established a legal relationship to one or both of these governments. The Chamber notes that the privileged treatment of veterans is a feature that is not peculiar to the society of the post-war Federation of Bosnia and Herzegovina. Also the applicant Mr. Šećerbegović received double credit for the years served as a soldier during the Second World War for the purposes of his entitlement to his pension, a benefit the other two applicants did not enjoy.

98. In the light of these considerations, the Chamber concludes that the difference in treatment between the JNA pensioners on the one hand and the pensioners of the Army of the Republic of Bosnia and Herzegovina and the Army of the Federation on the other hand, including the former JNA members who served in these armed forces, has an objective justification in that the members of the second group are former soldiers of the armed forces of the country or government whose pension fund is paying their pensions. As the applicants still receive a pension that is higher than the average pension paid by the PIO BiH, the Chamber does not find that the Federation government exceeded its margin of appreciation in not extending the favourable treatment granted to its own pensioners to the JNA pensioners. The Chamber thus considers that there is no discrimination of the applicants in the enjoyment of the right to social security in comparison to the military pensioners of the Army of the Republic of Bosnia and Herzegovina and the Army of the Federation either.

99. To sum up, the Chamber finds that the position of the applicants, and of the JNA pensioners in general, within the pension and social security system of the Federation of Bosnia and Herzegovina is characterised by elements which exclude any comparison to the civilian pensioners as a group in the same or a relevantly similar position. As to the difference in treatment with regard to the pensioners of the Army of the Republic of Bosnia and Herzegovina and the Army of the Federation, the Chamber finds that the difference in treatment is justifiable in the light of the above considerations. The Chamber thus concludes that the cases before it do not disclose discrimination against the applicants.

VII. CONCLUSIONS

100. For the above reasons the Chamber decides,

1. unanimously, to declare the applications admissible insofar as they are directed against the Federation of Bosnia and Herzegovina;

2. by 11 votes to 3, to declare the applications inadmissible insofar as they are directed against Bosnia and Herzegovina;

3. by 13 votes to 1, that there has been no violation of the applicants' right to peacefully enjoy their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights;

4. by 13 votes to 1, that the applicants have not been discriminated against in the enjoyment of their right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex Dissenting Opinion of Mr. Viktor Masenko-Mavi

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Viktor Masenko-Mavi.

DISSENTING OPINION OF MR. VIKTOR MASENKO-MAVI

I am unable to share the opinion of my colleagues that there has been no violation of the applicants' rights secured to them by the relevant international instruments. In my opinion, it is very unfortunate that the Chamber has reached completely different conclusions than the Human Rights Ombudsperson for Bosnia and Herzegovina in her Special Report No. 2859/99 on the situation of military pensioners, in particular the former members of the JNA. I find it unfortunate because

a) this is a typical case of discrimination, involving the responsibility of both the State and Federation of Bosnia and Herzegovina;
b) the Chamber has found that such an important acquired right as the right to a pension can be degraded into some sort of "social aid" or "humanitarian assistance";
c) the Chamber has, in fact, admitted that a particular group of persons treated with suspicion and hostility can be subjected to differential treatment, without any reasonable motivation, in the enjoyment of rights secured to others not so classified; and
d) the Chamber's decision establishes a precedent of a questionable nature, which runs counter to the spirit and letter of the human rights arrangements under the General Framework Agreement.

The facts of the cases are not controversial or in dispute. In 1992 the Republic of Bosnia and Herzegovina adopted a decree with legal force on pensions during the state of war, which established, without any motivation, that pensions of the military insured persons should be paid in the amount of 50 percent of the pension. This decree was subsequently, in 1994, confirmed as a law of the Republic. The new law of the Federation of 1998 on pension and disability insurance has reaffirmed the same principle of reduced payment, also without any motivation. All of the applicants retired long before the hostilities in Bosnia and Herzegovina. Thus, they were not involved in these hostilities. Furthermore, until 1992 they received the established amount of pension.

As to admissibility

I cannot accept the reasoning of the majority on the responsibility of the State of Bosnia and Herzegovina, according to which the Chamber has no competence *ratione personae* to consider the cases in so far as they are directed against the State (see paragraphs 68-71). In my opinion, the whole issue of the State's responsibility in the emerging practice of the Chamber (see, for example, cases nos. CH/96/3, 8 and 9, *Medan, Bastijanović* and *Marković*, and case no. 97/67, *Zahirović*) is based on arguments of a rather questionable nature. Both in the present cases and in other cases, the Chamber has used paragraph 1 of Article III of the Constitution of Bosnia and Herzegovina as its guiding principle in determining the State's responsibility. Accordingly, if matters complained of are not within the responsibility of the institutions of the State listed in this paragraph there are no grounds for imputing responsibility for any of the alleged or apparent violations to Bosnia and Herzegovina. The only exception that might involve the responsibility of the State, according to the Chamber's practice, is the fact that even after 14 December 1995 the former institutions of the Republic of Bosnia and Herzegovina continued to operate as institutions of the "new" (but at the same time continuing) State of Bosnia and Herzegovina established according to the General Framework Agreement.

This extremely restrictive interpretation of State responsibility, based almost exclusively on the provision which deals with the division of competencies between the State and the entities, is an erroneous one. The mere fact that some matters are within the responsibilities of the State and others are within the responsibilities of the entities cannot absolve the State or the entities from some of those fundamental obligations which relate to the protection of human rights and basic values of a democratic society. Neither the State nor the entities can be relieved from these obligations. They cannot be subsumed by any kind of separation of competencies and

responsibilities between them. Thus, for example, the Constitution of Bosnia and Herzegovina lists some very important fundamental principles, the observance of which in any circumstances should be guaranteed by the State of Bosnia and Herzegovina as such. If they are not observed in practice for whatever reasons (e.g. not taking appropriate steps, maintaining laws and tolerating practices which contradict them), the State should always be held responsible. Among these fundamental principles one can point out the following:

- the principle of the "respect for human dignity, liberty and equality" (the preamble);
- the constitutional recognition of the fact that "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law" (paragraph 2 of Article I);
- the principle that "Bosnia and Herzegovina and both entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms" (paragraph 1 of Article II);
- the principle of non-discrimination (paragraph 4 of Article II).

These principles constitute the democratic foundation of Bosnia and Herzegovina and the interpretation of other provisions of the Constitution in a way which would allow the departure from them or would relieve the State from the responsibility for their observance would undermine the foundation itself.

The involvement of State responsibility in the cases under consideration is supported also by other provisions of the Constitution. According to paragraph 1(e) of Article III, the institutions of the State are responsible for "the international obligations of Bosnia and Herzegovina". These obligations include also those that bind the State under different international human rights instruments. It is evident that in case of non-conformity between domestic and international standards, the State and its institutions are obliged to act in order to conform to the standards of the international human rights instruments. Notwithstanding the fact that social security matters are not mentioned among the responsibilities of State institutions, in the cases under consideration the State should have taken steps to live up to its obligations under the accepted international human rights instruments. This obligation of the State to act has been confirmed also by paragraph 2 of Annex II to the Constitution. According to this paragraph, the State, following the entry into force of the Constitution, should have taken steps to abolish those legislative provisions which violate the provisions of the Constitution (for example those former laws which involved discrimination). Former laws and regulations could remain in effect to the extent not inconsistent with the constitutional provisions. In other words, there is a clear omission on the part of the State to bring its legislative practice in harmony with the accepted international standards. Hence it is wrong to conclude that the Chamber has no competence *ratione personae* in so far as the complaints are directed against the State.

As to the merits

I am not in a position to share the opinion of the majority that there has been no violation of the applicants' right to peaceful enjoyment of their possessions (under Article 1 of Protocol No. 1 to the European Convention on Human Rights) and that there has been no discrimination whatsoever against the applicants. Rather, I think that the Ombudsperson, in her Special Report, has arrived at a proper conclusion: the applicants were deprived of their possessions in a discriminatory manner, in violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention.

There are no doubts whatsoever that the subject-matter of the applicants' complaint – the right to a pension based on individual contributions to the relevant social security system – falls within the ambit of Article 1 of Protocol No. 1. The Chamber has not questioned this fact (see paragraph 82). However, the majority unfortunately arrived at the conclusion that it was not necessary for the Chamber to deal with the complaints from the point of Article 1 of Protocol No. 1 (see paragraph 89). In support of this approach it has relied on different arguments which, according to my opinion, may be questioned for different reasons.

Firstly, the majority has taken note and endorsed without any reservation the arguments of the Federation of Bosnia and Herzegovina that military pensioners of the former JNA, following the

disintegration of Yugoslavia, have, in fact, lost their right to a pension within the social security system of the newly emerging states and that they are receiving some payment in the form of "humanitarian assistance" (see paragraph 86). This is unacceptable from the point of the protection of acquired rights. The principle of respect for acquired rights is part of generally accepted international law, and the entitlement based on those rights cannot be extinguished *per se* by any transfer of sovereignty. The new circumstances created by the transfer of sovereignty may justify a certain margin of appreciation for the states involved as to how these rights will be protected, but an outright denial of their recognition would run counter to the norms of generally accepted international law.

Secondly, some of the arguments relied upon leave open essential points and create the impression that the relevant laws are interpreted against their wording. Both the 1992 Decree and the 1998 Law of the Federation clearly recognise that military insured persons of the former JNA residing within the territory of the Republic or the Federation were and are receiving pensions (and not "humanitarian assistance"). Moreover, the Pension Fund of the Federation has issued letters in which it admits that military members of the JNA had been taken over by the BiH Fund, and that they are entitled to receive from that fund 50 percent of their previous pension (see paragraphs 84 and 85). In other words, at the level of laws at least, neither the former Republic of Bosnia and Herzegovina nor the Federation has dared to adopt a solution which would totally deny the respect for acquired rights. It is not quite clear from the reasoning of the majority what do the applicants finally receive from the social security system. In paragraph 89 it is stated that they receive payments from the PIO BiH (one of the Pension Funds within the Federation). However, in paragraph 98 it is admitted that they still receive pensions. But how can they receive pensions if, according to the majority's opinion, they "have not paid any contributions to the PIO BiH" and "had no legal relation to the PIO before the issuing of the 1992 Decree"? (see paragraph 88).

Thirdly, in paragraph 88 the majority points out that the "competent authorities of the Federation do not have access to the employment records of the former JNA employees, so that they would not be in a position to determine the entitlement of these pensioners and the amount to which they are entitled". It is true that there are no official channels for this type of correspondence between Bosnia and Herzegovina and Yugoslavia. But the Federation pension authorities are in practice in a position to establish both the entitlement and the amount. They are requiring from the JNA pensioners to produce documentation from the military pension fund in Belgrade for the months of February and March 1992 (see the Federation Ombudsmen report on the human rights situation for 1988, p. 41). Without this information there would be no possibility for the 50 percent reduction. It is evident that it is not possible to establish the half of something if there is no information on the full amount.

The examination of the complaints and the decision reached by the Chamber from the point of the principle of equality and non-discrimination raises even more serious doubts. My misgivings are not caused solely by the fact of the 50 percent reduction of the pensions of those involved (although one has to admit that it is a substantial reduction, which can be considered itself as a real threat to the substance of the right to use the benefits of the social security system based on individual contributions). It is evident to everybody that the social security system of the former SFRY has fallen apart and that there are no real possibilities for its full reactivation in the light of present day reality. To be more specific, I do not think that the applicants are entitled to a pension of an amount received by them before the adoption of the laws establishing the 50 percent reduction. What is embarrassing is the manner in which it was done. The relevant laws contained no reasons as to the reduction of the pensions of this particular group of persons, no legal remedy has been provided for those concerned, and no reduction was applied to any other category of pensioners. Furthermore, in practice, there is an unjustified differential treatment even within the group of military pensioners, who are former JNA members. Some receive reduced pensions and some receive full pensions. For the latter group, full credit is given also for the time served in the JNA (see paragraph 96).

Apart from this I would like to add that, in my opinion, the general state of the present social security system in Bosnia and Herzegovina has not received sufficient attention in the decision. Many of the documents used by the Chamber have indicated that the pension system is full of serious defects. Thus, the OSCE Report pointed out that "the current pension system remains poorly

supported, non-transparent, and full of loopholes allowing for arbitrary and discriminatory internal polices" (see p. 2). The Federation Ombudsmen also pointed to the problem of discrimination and arbitrary treatment of many pensioners (see pp. 40-41 of the report). For example, it should have been a warning signal for the Chamber that the elements of ethnicity are still present in the social security system, which is totally unacceptable. As it is known, there is no unified social security in the country, as Sarajevo, West Mostar and Pale maintain their own funds, which are competent for the pensioners living within the relevant ethnically determined regions. The State of Bosnia and Herzegovina is clearly responsible for tolerating the presence of elements of ethnicity in the domain of social security within its territory, even if it has no expressly established competence for social security matters.

Considering the complaints from the point of the responsibility of the Federation, one can hardly understand the real motives of the inclusion into the 1998 Law on Social Security of the provision on the 50 percent reduction. The applicants themselves were not involved in any kind of actions against the independent Bosnia and Herzegovina. Further, the number of such pensioners is relatively small (1,500 persons). Hence it is difficult to argue that the respect of their acquired rights would put an excessive burden on the social security system. Thus, the general interest cannot serve as a basis for their differential treatment. In any event, even if the situation was different, this interest may under no circumstances be invoked as a means of denying arbitrarily an acquired right protected under international law. Justice cannot be done to those in majority by doing injustice to others.

Finally, I think that this decision might adversely influence the process of voluntary return of displaced persons and refugees. The right to return is one of the most important rights secured by the General Framework Agreement. In a post-war situation the easiest way of impeding this process is the deprivation or substantial reduction of the social security entitlement of those who are considering the possibility of returning to their homes. Without legal security, due respect for the acquired rights and eradication of all possible discriminatory elements from the social security system, one cannot anticipate a speedy return of displaced persons.

(signed)
Viktor Masenko-Mavi

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 December 1999)

Case no. CH/98/710

D.K.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 2 November 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Anders MÅNSSON, 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 29(2), 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina. Since January 1995, he lived in an apartment in Kozarska Dubica, Republika Srpska with his family. On 16 December 1997 he and his wife entered into a contract with C.Š, the wife of the holder of the occupancy right over the apartment. Under this contract, the applicant and his wife would support C.Š. during her lifetime. The husband of C.Š. had died and under the applicable law she was entitled to become the holder of the occupancy right over the apartment, but had not taken the required legal steps to do so. In return for taking care of her, the applicant and his family were entitled to reside in the apartment and would, according to the contract, become the owners of it upon the death of C.Š. She died on 23 December 1997.

2. On 28 May 1998 the Secretariat for Administrative Affairs of the Municipality of Kozarska Dubica ("the Secretariat") declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within fifteen days under threat of forcible eviction. The applicant appealed against this decision to the competent organ. He also made an application to the Chamber. On 18 June 1998 the Vice-President of the Chamber ordered the respondent Party as a provisional measure to take all necessary steps to prevent the eviction of the applicant from the apartment. However, on 27 July 1998, in violation of this order, he was evicted from the apartment together with his family.

3. The case raises issues principally under Article 8 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced to the Chamber on 18 June 1998 and registered on the same day. The applicant requested that the Chamber order the respondent Party as a provisional measure to take all necessary action to prevent his eviction from the apartment.

5. On 18 June 1998 the Vice-President of the Chamber ordered, pursuant to Rule 36(2) of its Rules of Procedure, the respondent Party to take all necessary steps to prevent the eviction of the applicant from the apartment. The order stated that it would remain in force until the Chamber had given its final decision in the case, unless it was withdrawn by the Chamber before then.

6. On 8 and 27 July 1998 the Municipality of Kozarska Dubica submitted observations on the application to the Chamber. The Chamber decided not to accept these observations as they had not been submitted by the Agent of the respondent Party.

7. On 8 December 1998 the Chamber decided, pursuant to Rule 49(3)(b), to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 8 January 1999. No observations were received from the respondent Party within that time-limit.

8. On 18 January 1999 the applicant was requested to submit a written statement and any claim for compensation or other relief which he wished to make. This statement, which did not contain a claim for compensation, was received by the Chamber on 17 February 1999.

9. On 17 February 1999 the observations of the respondent Party were received, outside the time-limit set by the Chamber. The Chamber decided to accept these observations regardless of this fact and on 5 March 1999 transmitted them to the applicant for his observations. No such observations have been received from the applicant.

10. The Second Panel of the Chamber deliberated upon the admissibility and merits of the application on 8 July and 9 September 1999. On 9 September 1999, in accordance with Rule 29(2), it relinquished jurisdiction in favour of the plenary Chamber as the case raises a serious question as

to the interpretation of the Agreement.

11. On 5 October and 2 November 1999 the plenary Chamber deliberated on the admissibility and merits of the application. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

12. The facts of the case as they appear from the submissions of the Parties and the documents in the case-file may be summarised as follows.

13. The applicant lived with his family in an apartment located at Milana Tepića No. 64 in Kozarska Dubica, Republika Srpska. On 19 December 1997, he and his wife entered into a contract with Ms. C.Š., the wife of the holder of the occupancy right over the apartment. Her husband had died and under the Law on Housing Relations (see paragraph 17 below) she was entitled to succeed into the occupancy right over the apartment. However, she had not taken the formal steps required for her to so succeed. The main terms of the contract of 19 December 1997 were that the applicant and his wife would support Ms. C.Š. during her lifetime and, in return, they were entitled to reside in the apartment and would become the owners of it upon her death. Ms. C.Š. died on 23 December 1997.

14. On 28 May 1998 the Secretariat ordered the applicant to vacate the apartment within fifteen days, under threat of forcible eviction. The reasoning for this decision was that the applicant was an illegal occupant of the apartment. The decision stated that there was a right of appeal against this decision to the Executive Board of the Municipality of Kozarska Dubica. The applicant did not appeal to this body, but instead to the Ministry for Urbanism, Housing-Communal Affairs, Civil Engineering and Town Planning ("the Ministry"), which is in fact the competent body to decide on such an appeal. On 1 February 1999 the Ministry decided to return the matter to the first instance organ for review, on the ground that the procedural requirements of national law had not been met during the original proceedings. The Chamber has not been informed of whether there has been any further decision by the Secretariat.

15. On 15 June 1998 the Secretariat issued a conclusion scheduling the applicant's eviction for 19 June 1998. This eviction was not carried out. On 24 July 1998 the Secretariat issued a further conclusion, scheduling the applicant's eviction for 27 July 1998. He has informed the Chamber that he was evicted on this date.

B. Relevant legislation

1. The Human Rights Agreement (Annex 6)

16. Article X of the Agreement, entitled "Proceedings before the Chamber", reads, insofar as relevant, as follows:

> "1. … The Chamber shall have the power to order provisional measures…
> (…)
> 5. The Parties undertake to provide all relevant information to, and to cooperate fully with the Chamber."

2. Law on Housing Relations

17. The Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 14/84) sets out the categories of persons who are considered to be members of the household of the holder of an occupancy right over an apartment. These persons include the occupancy right holder's spouse, children and certain relatives by birth and marriage. Such persons are entitled to succeed to the occupancy right upon, *inter alia*, the death of the holder of the

occupancy right. In addition, persons who have entered into a contract under which they will support the holder of the occupancy right during his or her lifetime and who have lived in the apartment pursuant to such a contract for a minimum of five years are considered to be members of the household of the holder of the occupancy right.

18. The members of the household are required to inform the holder of the allocation right over the apartment in writing of the successor.

19. The law was amended by the Law on Amendment of the Law on Housing Relations (Official Gazette of the Republika Srpska no. 19/93). This law removed persons who resided in an apartment pursuant to a contract for lifetime support from the category of persons who are members of the household of an occupancy right holder. On 27 October 1999, this amendment was revoked by Article 1 of the Law on Cessation of Articles of the Law on Amendments and Additions to the Law on Housing Relations, which was passed by the High Representative to Bosnia and Herzegovina.

IV. COMPLAINTS

20. The applicant does not make any specific allegations of violations of any of his human rights as protected by the Agreement. The application appears to raise an issue under Article 8 of the Convention.

V. SUBMISSIONS OF THE PARTIES

21. The respondent Party, in its observations of 17 February 1999, claims that the application is inadmissible for failure to exhaust the domestic remedies available to the applicant. It claims that the application was lodged while the domestic administrative proceedings were still pending.

22. The respondent Party also claims that the application is inadmissible as manifestly ill-founded. This is because the applicant had no legal right to occupy the apartment. His contract with the wife of the holder of the occupancy right over the apartment is not sufficient under national law to entitle him to have the occupancy right over the apartment transferred to him. Therefore he has no right capable of protection under the Agreement

23. The applicant maintains his complaint.

VI. OPINION OF THE CHAMBER

A. Admissibility

24. 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.

25. 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.

26. As the Chamber noted in the *Onić* case (no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 35 (previously Article 26) of the Convention, the remedies available to an applicant must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. In addition, when applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

27. The Chamber notes that the applicant was evicted from the apartment on 27 July 1998, while his appeal to the Ministry was pending. On 1 February 1999 the Ministry decided to return the matter to the first instance organ for review. There is no indication that such a decision has been made to date. Accordingly this remedy cannot be considered to be an effective one within the meaning of Article VIII(2)(a) of the Agreement.

28. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

29. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

30. The applicant did not specifically allege a violation of his rights as protected by Article 8 of the Convention. However, the Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the application. Article 8 reads, insofar as relevant, as follows:

> "1. Everyone has the right to respect for..., his home...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

31. The Chamber notes that the applicant lived in the apartment from January 1995 until his eviction in July 1998. It is therefore clear that the apartment is to be considered as the applicant's "home" for the purposes of Article 8 of the Convention. This is unchanged by the fact that under the law of the Republika Srpska the applicant had no right to reside in the apartment at the time of his eviction. Article 8 of the Convention does not require the existence of a legal basis under national law for the place where a person lives to be considered to be his or her home. The Chamber considers that the eviction of the applicant from his home on 27 July 1998, in accordance with the conclusion of the Secretariat, constituted an "interference by a public authority" with that right.

32. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see the above-mentioned *Onić* decision, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

33. On 18 June 1998 the Vice-President of the Chamber ordered the respondent Party as a provisional measure to take all necessary steps to prevent the eviction of the applicant from the apartment. This order was stated to remain in force until the Chamber's final decision in the case unless withdrawn at an earlier stage. The order had not been withdrawn on the date of the applicant's eviction, 27 July 1998. Accordingly it was still in force at that time.

34. The Chamber's order was issued under Article X(1) of the Agreement (see paragraph 16 above). Article X(5) of the Agreement requires the Parties to cooperate fully with the Chamber.

35. The Agreement is directly applicable in the legal system of Bosnia and Herzegovina and its

constituent entities and binding upon all of their authorities. Therefore the respondent Party was obliged, under the Agreement, to comply with the Chamber's order.

36. The eviction of the applicant from the apartment he occupied was in violation of that order and Article X of the Agreement (see paragraph 16 above). A violation of an order for provisional measures cannot be considered to be "in accordance with the law" as required by paragraph 2 of Article 8 of the Convention.

37. In the aforementioned circumstances the Chamber concludes that Article 8 of the Convention has been violated, given that the interference with the applicant's right to respect for his home was not "in accordance with the law" as required by paragraph 2 of Article 8.

2. Article 1 of Protocol No. 1 to the Convention

38. The applicant did not specifically allege a violation of his rights as protected by Article 1 of Protocol No. 1 to the Convention. However, the Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the application. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

39. The Chamber must first consider whether the applicant's rights under the contract with the wife of the holder of the occupancy right over the apartment constituted a "possession" within the meaning of Article 1 of Protocol No. 1. The Chamber has previously noted that the European Court of Human Rights has given a wide interpretation to the concept of "possessions", holding that it covers a wide variety of rights and interests having economic value (see case no. CH/96/28, *M.J.,* decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996–1997). The Chamber has also held that an occupancy right over an apartment constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 (see case no. CH/97/46, *Kevešević,* decision on the merits delivered on 10 September 1998, paragraphs 72 and 73, Decisions and Reports 1998).

40. The Chamber notes that the applicant and his wife entered into a contract with C.Š., the wife of the holder of the occupancy right over the apartment (see paragraph 13 above). The contract stated that they were to become the owners of the apartment after her death. Until that time, they were entitled to reside in the apartment and were required to take care of her. However, under the appropriate law in force in the Republika Srpska (see paragraph 17 above), such contracts are incapable of establishing a right to succeed into an occupancy right over an apartment. This is due to the fact that the law of the Republika Srpska requires that a person reside in an apartment in pursuance of a contract for lifetime support for a minimum of five years before he or she can be considered to be a member of the household of the holder of the occupancy right over the apartment. The applicant had not lived in the apartment for this length of time.

41. In addition, as C.Š. did not actually own the apartment, the contract could not grant the applicant and his wife any right of ownership over the apartment. The rights of the applicant and his wife under the contract were, according to the law of the Republika Srpska, limited to the right to reside in the apartment during the lifetime of C.Š. Thus, at the time of his eviction from the apartment, the applicant had no protected right over the apartment.

42. Accordingly, the applicant did not have any right that could be considered to constitute a "possession" over the apartment within the meaning of Article 1 of Protocol No. 1 to the Convention and it follows that there has been no violation of that provision.

VII. REMEDIES

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

44. The applicant did not request the Chamber to award him any monetary compensation or other relief. The respondent Party did not submit any observations on the issue of remedies.

45. The Chamber notes that it has found a violation of the applicant's right to respect for his home as protected by Article 8 of the Convention, due to his being evicted in violation of the order for provisional measures preventing such eviction. The Chamber considers that, in most such cases, an appropriate order would be to reinstate the applicant into the property concerned without delay. However, such an order would not be appropriate in the present case, as the Chamber has found that the applicant's contract does not any longer confer upon him any right to reside there. Accordingly, it considers that the finding of a violation of the applicant's rights as guaranteed by Article 8 of the Convention constitutes a sufficient remedy.

VIII. CONCLUSION

46. For the above reasons, the Chamber decides,

1. by 10 votes to 3, to declare the application admissible;

2. by 9 votes to 4, that the eviction of the applicant from the apartment he previously occupied constitutes a violation of his right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that the application does not disclose a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention; and

4. by 12 votes to 1, that the finding of a violation of the applicant's rights as guaranteed by Article 8 of the Convention constitutes a sufficient remedy.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains a separate dissenting opinion of Messrs. Jakob Möller and Vitomir Popović.

DISSENTING OPINION OF MESSRS. JAKOB MÖLLER AND VITOMIR POPOVIĆ

While the failure of the respondent Party to comply with the order for provisional measures issued by the Vice-President of the Chamber on 18 June 1998 under Article X(1) of the Agreement constitutes a serious breach by the respondent Party of its obligations to cooperate fully with the Chamber (cf. Article X(5) of the Agreement), we are unable to agree with the majority that this failure constitutes a violation of Article 8 of the Convention. Our reasons are set out below:

1. Article X of the Agreement concerns the proceedings before the Chamber. It empowers the Chamber, *inter alia*, to order provisional measures, to appoint experts and to compel the production of witnesses and evidence. These procedural steps can be taken at any stage in the proceedings, but it is in the nature of an order for provisional measures that it would normally be issued at the initial stage of the proceedings on the strength of the information, often scant, contained in the applicant's initial submission and without any adversary proceedings. Such an order would aim at preventing a violation of a right, or a continued violation of a right, should there turn out to be a protected right in the first place. It is not intended to create a protected right that otherwise would not exist.

2. Article X(1) does not state the grounds or specify the circumstances which would justify an order for provisional measures. Rule 36(2) of the Chamber's Rules of Procedures clarifies that provisional measures can be ordered under Article X of the Agreement "in the interest of the parties or the proper conduct of the proceedings". It must be presumed that the "interest" sought to be protected is a genuine one based in law, but not merely a fictitious interest outside the law. Unavoidably, there may be a risk that an order for provisional measures issued on the basis of scant or wrong information may turn out to be unwarranted. Accordingly, the Chamber may at any stage lift an order for provisional measures if further information obtained reveals that it was not justified in the beginning.

3. As to the grounds and circumstances that would justify an order for provisional measures in the interest of an applicant, or to ensure that a meaningful consideration of a case can take place, the following, *inter alia,* come to mind:

- when an apparent protected right would otherwise risk serious damage;
- when the consequences would otherwise be particularly onerous;
- to prevent irreparable harm;
- to prevent evidence being tampered with or destroyed; and
- the need to impound evidence or put assets in escrow.

4. In the present case, the order for provisional measures aimed at preventing the applicant's eviction from the apartment where he lived. The right sought to be protected was the applicant's right to respect for his home and the enjoyment of that right without unlawful interference by public authority (cf. Articles 8(1) and 8(2) of the Convention). The order was issued at the beginning of the proceedings on the strength of the information provided by the applicant, who claimed to have concluded a contract entitling him to become "the owner" of the apartment. This claim turned out to be fictitious.

5. During the proceedings it transpired that the applicant in fact did not have a protected right to continue to live in the apartment in question after the death of the occupancy right holder, with whom he had concluded a life support contract one week earlier. While this does not excuse the failure of the respondent Party to comply with the order for provisional measures of 18 June 1998, there is no indication that the eviction of the applicant was not carried out in accordance with the provisions of the domestic law in force, nor has it been shown that the interference was inconsistent with the other requirements, set out in Article 8(2) of the Convention.

6. In the light of the above, we conclude that the interference complained of by the applicant does not reveal a violation of Article 8 of the Convention.

(signed)
Jakob MÖLLER

(signed)
Vitomir POPOVIĆ

DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/712

Manojlo BEŠTIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission for Bosnia and Herzegovina, sitting as the plenary Commission on 13 January 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 Articles 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. On 29 May 1996, the applicant, a citizen of Bosnia and Herzegovina of Serb origin, submitted to the First Instance Court in Tuzla a claim for compensation arising from a labour relationship terminated in 1987. The claim related to an earlier case that included a labour dispute (pending before the Basic Labour Court in Tuzla from 27 January 1988 until 30 June 1992). The Labour Court ceased operations on 30 June 1992, according to the Law on Cessation of the Application of the Law on Labour Courts (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, No. 4/92), and its cases were taken over by the First Instance Court in Tuzla. The proceedings in this case ended in June 2002.

2. The applicant complains that he has been denied his right to work by termination of his labour relationship on 15 May 1987 on the basis of an unlawful decision by his company, and that his rights arising from that labour relationship have been violated. According to the applicant, he should have been retired in 1989 instead of 1987. He also complains that he has been discriminated against at "all levels" on ethnic grounds in the proceedings before the courts in Tuzla. Finally, he complains of the length of the proceedings before the Municipal Court in Tuzla.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was submitted to the Human Rights Chamber on 18 June 1998 and registered on the same date.

4. On 2 March 1999, the Chamber invited the applicant to provide more information related to the court proceedings pending before the Tuzla First Instance Court.[1] He was particularly requested to answer whether there had been any developments in those proceedings since he submitted the request to the Court on 29 May 1996. The applicant replied on 17 March 1999,

5. On 5 June 1999, the Chamber transmitted the case to the respondent Party under Article 6 of the Convention for its observations on the admissibility and merits.

6. On 23 August 1999, the respondent Party submitted its written observations on the admissibility and merits of the application.

7. On 6 September 1999, the Chamber received additional information from the applicant.

8. The applicant submitted his comments on the respondent Party's observations on 22 October 1999, and the Chamber transmitted the applicant's comments to the respondent Party on 12 December 1999. The respondent Party submitted responsive observations on 31 December 1999, and the Chamber transmitted the respondent Party's observations to the applicant on 25 January 2000.

9. On 8 February 2000, the applicant informed the Chamber about new developments in his case before the Tuzla Municipal Court.

10. On 8 August 2000, the Chamber received a copy of the applicant's memo to the Federal Commission for Election and Appointment of Judges.

11. On 24 August 2000, the Chamber received the applicant's second memo to the Federal Commission for Election and Appointment of Judges, along with a copy of the Commission's reply to the applicant's first memo.

[1] The First Instance Court and the Municipal Court are the same institution. The official name was changed in 1996, and it is referred to throughout this decision by the name held during the relevant time period.

12. On 27 September 2000, the applicant submitted a copy of the 25 July 2000 judgement of the Tuzla Municipal Court and his 25 September 2000 appeal of that judgement.

13. On 11 August 2001, the applicant submitted a copy of the 21 May 2001 judgement of the Tuzla Cantonal Court.

14. On 18 October 2002, the applicant submitted a copy of the 20 June 2002 judgement of the Supreme Court of the Federation of Bosnia and Herzegovina.

15. On 21 May 2003, the respondent Party submitted additional information. The Chamber transmitted this additional information to the applicant on 27 May 2003.

16. On 10 June 2003, the applicant submitted additional information. The Chamber transmitted these observations to the respondent Party on 12 June 2003.

17. The Chamber considered the application on 7 June 1999 and 5 November 2003. The Human Rights Commission considered the application on 13 January 2004, when it adopted the present decision.

III. FACTS

18. The applicant submitted a claim for compensation to the First Instance Court in Tuzla on 29 May 1996. The claim related to an earlier case that included a labour dispute (pending before the Basic Labour Court in Tuzla from 27 January 1988 until 30 June 1992). The Labour Court ceased operations on 30 June 1992, according to the Law on Cessation of the Application of the Law on Labour Courts (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, No. 4/92), and its cases were taken over by the First Instance Court in Tuzla.

19. The applicant's lawsuit was based on his allegations that a 17 April 1987 procedural decision issued by the director of the railway transport company where he was employed, "OPŽ Tuzla", unlawfully terminated his labour relations because he had accrued 40 years' worth of pension insurance. The applicant believes that the procedural decision unlawfully forced him into early retirement, and he took court action to have it quashed.

20. The applicant further alleged that two other procedural decisions, dated 13 August 1987 and 29 October 1987, concerning the conditions of his early retirement, were also unlawful. He initiated court actions against these decisions, and in the course of these administrative disputes, the decisions were annulled by decisions of the Higher Court in Tuzla on 31 August 1988; the Supreme Court in Sarajevo on 30 August 1991; and a procedural decision of the Ministry of Healthcare, Labour and Social Protection on 14 October 1991. Neither the court judgements nor the procedural decision were ever enforced by the first instance organs.

21. In 1992, after the armed conflict in Bosnia and Herzegovina began, the Courts of Associated Labour were abolished. Subsequently, on 1 January 1996, that the First Instance Court in Tuzla took over the case. On 29 May 1996, the applicant requested the Tuzla First Instance Court to award him compensation for damages he allegedly suffered from 15 May 1987 until 15 May 1989, the date on which he claims he should have been retired. He further requested the court to oblige the Pension Insurance Office (PIO) Branch Office in Tuzla to issue a procedural decision on the applicant's retirement and to pay him all outstanding pension amounts resulting from pension increases from 15 May 1989 through the end of the court proceedings. He also claimed compensation for legal expenses.

22. On 17 March 1997, the applicant requested the President of the Tuzla Municipal Court to decide upon his request to disqualify judge Zaim Zečević from further proceedings in the

applicant's case, for the purpose of speeding up the proceedings. The Court President issued a procedural decision on 4 April 1997, by which he refused disqualification of judge Zečević. The President explained that he had examined the applicant's request, as well as a written report submitted by judge Zečević. The President also examined the entire case file, and, on the basis of this examination, he learned that the conditions required by Article 71(1)(6) of the Law on Civil Procedure regarding disqualification of judges were not met.

23. The applicant later wrote a memo to the Federal Commission for Election and Appointment of Judges, in which he stated that judge Zečević had so far scheduled 27 hearings, but that no fair or legally grounded judgement had been issued so far. He added that judge Zečević did not respect principles of impartiality because he favoured the respondent party during proceedings. The Federal Commission for Election and Appointment of Judges, by its written submission of 10 August 2000, answered the applicant, stating that it would carry out the necessary steps regarding the applicant's allegations about judge Zečević in his case. The Commission further stated that the applicant's allegations regarding possible impartiality on the part of judge Kratović, a judge sitting in the applicant's case before the Supreme Court, were ill-founded. The Commission has no further information as to whether the Federal Commission for Election and Appointment of Judges took any steps to examine judge Zečević's conduct.

24. On 25 July 2000, the Municipal Court in Tuzla issued a judgement in the applicant's case against the Bosnia and Herzegovina Railways Regional Office for Administration in Tuzla (the successor of OPŽ Tuzla), in which it refused the applicant's claim as ill-founded.

25. The applicant appealed against this judgement to the Cantonal Court in Tuzla. The Cantonal Court issued a judgement on 21 May 2001, by which it refused the applicant's appeal and confirmed the judgement of the Municipal Court.

26. The applicant sought revision ("revizija") before the Supreme Court of Federation of Bosnia and Herzegovina against the judgement of the Municipal Court. The Supreme Court, by its judgement of 20 June 2002, refused the revision as ill-founded.

IV. RELEVANT LEGAL PROVISIONS

27. Article 426 of the Law on Civil Procedure (OG FBiH no. 42/98 and 3/99) applicable during the relevant time period, stipulated 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

28. The applicant complains that he has been denied his right to work by termination of his labour relations on 15 May 1987 on the basis of an unlawful decision by his company, and that his rights arising from that labour relation have been violated. He also complains that he has been discriminated against at "all levels" on ethnic grounds in the proceedings before the courts in Tuzla. Finally, he complains of violations of his right to a fair trial before an impartial tribunal and of the length of the proceedings before the Municipal Court in Tuzla.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to admissibility

29. As to the admissibility, the Federation of Bosnia and Herzegovina submits that the applicant has not exhausted domestic remedies, has run afoul of the six-month rule, and has abused the right to petition.

30. The Federation argues that the applicant submitted his application to the Chamber without having requested the competent court to issue a procedural decision regarding his retirement dispute. He also failed to file a suit before the competent court against the decision terminating his labour relations. Although the applicant alleged that the decision was not delivered to him, the Federation asserts that he was obviously aware of it and instituted disputes related to that particular decision. Because of the applicant's inactivity in these proceedings, however, the Federation asserts that the application constitutes an abuse of petition. Further, because the applicant did not exhaust domestic remedies or demonstrate that he intended to do so, there was no final decision in his case, and the applicant therefore did not comply with the six-month rule. Thus, the respondent party asks the Commission to declare the application inadmissible under Articles VIII(2)(a) and VIII(2)(c) of the Agreement.

31. The respondent Party also challenges the pertinence of the compensation claim. The respondent party asserts that the compensation claim is irrelevant if the Commission accepts its proposal and declares the application inadmissible. Regarding the request for compensation for lost income between 15 May 1987 and 8 November 1990, the respondent party points out that this request is outside the Commission's competence *ratione temporis*. Further, the request is ill-founded because the applicant received pensions during the entire disputed period and therefore realised income in accordance with law. Regarding the applicant's compensation request for pension contributions for the period from 15 May 1987 to 8 November 1990, the Federation argues that this claim is outside the Commission's competence *ratione temporis*. Regarding the applicant's request to pay him the difference in pension amounts after 8 November 1990, the respondent Party points out that it is also outside of the scope of Commission's competence *ratione temporis* because it relates to a period before 14 December 1995.

2. As to the merits

32. The Federation asserts that its judicial system and its rules for appointment of judges were established in such a way as to guarantee both the independence and impartiality of the courts. Further, public hearings are guaranteed by Articles 287-291 of the Law on Civil Procedure (OG FBiH no. 42/98 and 3/99). The Federation also notes, in its observations of 23 August 1999, that the applicant obtained a final court decision in his favour, and it asserts that the fact that the decision has not yet been implemented does not minimise the significance of its issuance. Regarding the "reasonable time" requirement, the Federation points out that this was a very complex case, and that the applicant himself contributed to its complexity and length by his failure to make use of domestic remedies. According to the Federation, the applicant complains that his work experience was not accurately reflected in his employment card, but he did not initiate special proceedings to determine these facts. Consequently, the Federation argues, there has been no violation of Article 6 of the Convention, and the application should be refused as manifestly ill-founded.

3. As to compensation

33. With respect to the compensation claim for legal expenses and fees, the respondent Party asserts that the claim is ill-founded. The respondent party argues that the claim is too high and that the applicant has submitted no evidence to show he incurred such expenses.

34. Regarding the compensation claim for mental suffering and other non-pecuniary damages, the respondent Part argues that this request is ill-founded because the applicant was not subjected to any violence or injustice. The respondent Party further disputes the amount of this claim as being too high.

35. Regarding the applicant's compensation request for pension contributions for the period from 15 May 1987 to 8 November 1990, the Federation asserts that this claim is ill-founded because the applicant actually received his pension for that period in accordance with the law.

36. Regarding the applicant's request to pay him the difference in pension amounts after 8 November 1990, the respondent asserts that this request is also ill-founded because a full pension was established for the applicant on the basis of the most favourable period in which he worked, i.e. from 1974 to 1984.

37. Finally, the Federation asks the Commission to reject the applicant's compensation claim in its entirety as ill-founded, regardless of the Commission's decision on the admissibility and merits of the application.

B. The applicant

1. As to admissibility

38. The applicant states that he exhausted all available domestic remedies.

2. As to the merits

39. The applicant denies that his legal matter was a complex one, but insists that it was an easy one that had to be decided upon expeditiously. He complains of obstruction in the court proceedings and states that the judge hearing his case before the Tuzla Municipal Court held many hearings but did not intend to issue a judgement. He states that he experienced discrimination in the court proceedings, and, in his memorandum to the Federal Commission for Election and Appointment of Judges, he specifically accused judges Zečević, Šabanović, and Gulamović of the Tuzla Municipal Court and judge Kratović of the Federation Supreme Court of not being impartial in his case. He alleges that judge Zečević committed serious violations of substantive and procedural laws in the proceedings in his case. He also accuses Tuzla Municipal Court judges Šabanović and Gulamović of not being impartial because "they did not take any steps for this marathon dispute of 13 years to be finalised in accordance with law…". The applicant also accused judge Kratović of the Federation Supreme Court of not being impartial. He further asserts that the 21 May 2001 judgement of the Tuzla Cantonal Court is discriminatory.

VII. OPINION OF THE COMMISSION

40. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure

governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

A. Admissibility

41. Before examining the merits of the application, the Commission shall decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), "the [Commission] shall take into account the following criteria: (a) whether effective remedies exist, and the applicant has demonstrated that they have been exhausted." Under Article VIII(2)(c), "the [Commission] shall also dismiss any application which it considers incompatible with this Agreement...."

1. Regarding the alleged violation of the applicant's right to work

42. The Commission notes that the applicant claims that he should have been retired in 1989 instead of 1987. Therefore, the alleged violation of the applicant's right to work occurred prior to 14 December 1995. Having in mind that all of the events allegedly leading to a violation of the applicant's right to work took place before 14 December 1995, the Commission finds that this part of the application is incompatible *ratione temporis* with the Agreement. Consequently, the Commission decides to declare this part of the application inadmissible.

2. Regarding the alleged violation of the applicant's right to a fair trial before an independent and impartial tribunal

43. In examining the judgements of the Tuzla Municipal Court, Tuzla Cantonal Court, and Federation Supreme Court, as well as the opinion of the Federal Commission on Election and Appointment of Judges, the Commission finds no indication that judges Zečević and Kratović gave any unfair advantage to the defendant or that they failed to conduct the proceedings impartially. Nor has the applicant provided evidence to substantiate such a claim. The Commission thus considers the application in this part incompatible with the Agreement in terms of Article VIII(2)(c) and declares it inadmissible as manifestly ill-founded.

44. To the extent that the applicant also claims that the court wrongly established the facts and misapplied the substantive law, the Commission recalls that the Chamber consistently held that it had no general competence to substitute its own assessment of the facts and application of the law for that of the domestic courts (*see, e.g.*, case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999). The same applies to the Commission. Here, in establishing the facts of the case, the first instance court examined numerous decisions and documents of the defendant, decisions of the Court of Associated Labor, procedural decisions of pension funds, and the judgements of the Tuzla Cantonal Court and Federation Supreme Court. It also examined the opinions of financial and pension insurance court experts. In its judgement, the Tuzla Cantonal Court reasoned that the decision of the first instance court was grounded on a correct assessment of the facts and extensive interpretation of all the evidence. In the circumstances, there is no indication that there has been any error by the domestic courts serious enough to allow the Commission to depart from established practice and substitute its own assessment of the facts or application of the law.

45. The Commission thus considers the application in this part manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement and declares it inadmissible.

3. Regarding the applicant's discrimination claim

46. The applicant also states that, during the proceedings before the domestic courts, he was discriminated against at "all levels".

47. The applicant states that he has been generally discriminated against by the Federation courts because of his Serb ethnic background, but he has failed to substantiate these allegations. He does not assert how he was treated differently from similarly situated persons before the respondent Party's courts.

48. Having regard to the above, the Commission cannot determine that the applicant was treated differently from others in the same or relevantly similar situations. In the circumstances, the Commission considers the application in this part manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement and declares it inadmissible.

4. Regarding the alleged violation of the applicant's right to a fair trial within a reasonable time and the requirement to exhaust effective domestic remedies

49. The Federation argues that the applicant did not exhaust effective domestic remedies. The Commission 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 Commission that the remedy was an effective one. Here, the applicant's case before the domestic courts was delayed for more than four years before it was declared inadmissible. The applicant subsequently sought review in the Cantonal Court and Federation Supreme Court. In these circumstances, the Commission declines to declare the application inadmissible for non-exhaustion of domestic remedies.

5. Conclusion as to admissibility

50. Having regard to the above, the Commission declares the application admissible in relation to the applicant's complaint of a violation of his right to have his civil rights determined within a reasonable time under Article 6 and inadmissible in relation to the applicant's other complaints.

B. Merits

1. Article 6 of the Convention

51. The applicant complains of unreasonably long judicial proceedings in his case. In particular, the applicant claims there had already been an unreasonable delay in proceedings before the Tuzla Municipal Court at the time he submitted his application to the Chamber. He stated that the court had held 17 hearings between 29 May 1996 and 18 June 1998, but had still not decided the case. The applicant again complained of delays in the proceedings after the first instance court issued its judgement on 25 July 2000, noting that it had been four years, six months, and 24 days since the Municipal Court took the case over from the Court of Associated Labour.

52. Article 6 paragraph 1 of the Convention provides, in relevant part, as follows:

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

53. The purpose of Article 6's reasonable time guarantee is to protect all parties to court proceedings against excessive procedural delays. In non-criminal cases, the relevant time begins with the initiation of court procedures and continues until the case is finally determined. Factors that are always considered by the European Court of Human Rights in deciding whether a proceeding meets the "reasonable time" standard include the complexity of the case, the conduct of the competent authorities, and the conduct of the applicant that could have contributed to procedural delays, as well as particular circumstances that could justify prolonging the case. The approach is to examine these factors separately and then to assess their cumulative effect.

54. From the moment the applicant submitted his claim to the First Instance Court in Tuzla on 29 May 1996, more than four year passed before the applicant obtained a first instance decision on 25 July 2000. No final decision was obtained until the issuance of the Supreme Court's judgement on 20 June 2002. Applying the factors listed above, the Commission finds no indication in the record that this was a complicated case, or that the applicant himself should be held responsible for the delays in the proceedings. Nor do there appear to be extenuating circumstances to justify judicial procrastination of this length. Further, the Commission recalls that, under the Law on Civil Procedure, labour disputes are to be decided expeditiously, with regard to the urgency attaching to the subject matter. In this light, the extended delay in this case cannot be said to be reasonable. Although the Tuzla Municipal Court held numerous hearings in the case, the prolonging of the proceedings does not appear to be justified. In the circumstances, the length of proceedings in this labour dispute leads the Commission to conclude that the Federation of Bosnia and Herzegovina has violated the applicant's right, under Article 6 of the Convention, to a fair trial within a reasonable time.

2. Conclusion on the merits

55. 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

56. Under Article XI(b) of the Agreement, the Commission 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.

57. The applicant claims compensation for damages from the denial of his right to work from 15 May 1987 through 8 November 1990, in the amount of 23,406.57 KM plus interest. He also seeks non-pecuniary damages for moral suffering in the amount of 12,000.00 KM, and he seeks to recover legal fees and costs in the amount of 9,000.00 KM. He also requests that the respondent party be ordered to enforce his court decisions of 31 August 1988 and 30 August 1991, to pay all his unpaid pension insurance contributions through the date that those decisions are enforced, to obtain all necessary pension forms, and to enact a first instance decision regarding his retirement. The applicant also requests all unpaid pension insurance instalments from 8 November 1990 until the issuance of a first instance decision on his retirement comes into force.

58. The applicant requests the Chamber (now Commission) to order the respondent Party to compensate him for damages from the denial of his right to work from 15 May 1987 through 8 November 1990, in the amount of 23,406.57 Convertible Marks (Konvertibilnih Maraka, "KM"), plus interest. He also seeks non-pecuniary compensation for mental suffering and pain in the amount of 12,000.00 KM, as well as compensation for court expenses and legal fees in the amount of 9,000.00 KM. He further requests the Chamber (now Commission) to order the respondent Party to pay all his unpaid pension insurance contributions.

59. The Commission has found the applicant's complaints regarding his right to work inadmissible. Therefore there can be no compensation for these complaints as claimed by the applicant. The Commission has, however, found a violation of the applicant's right to a fair hearing within a reasonable time.

60. The Commission finds it appropriate to award the applicant compensation for the sense of injustice he suffered as a result of the unjustifiable delays in the court proceedings. The Commission will order the Federation of Bosnia and Herzegovina to pay the applicant, by way of compensation for non-pecuniary damages, the sum of 2,000.00 KM.

IX. CONCLUSIONS

61. For the above reasons, the Commission decides:

1. unanimously, to declare inadmissible that portion of the application alleging a violation of the applicant's right to work as incompatible *ratione temporis* with the provisions of the Agreement;

2. unanimously, to declare inadmissible that portion of the application alleging a violation of the applicant's right to a fair trial before an independent and impartial tribunal as manifestly ill-founded;

3. unanimously, to declare inadmissible that portion of the application alleging that the applicant was discriminated against in his enjoyment of the rights guaranteed by Article 6 of the Convention as manifestly ill-founded;

4. unanimously, to declare the application admissible insofar as it relates to the alleged violation of the applicant's right to a fair hearing within a reasonable time under Article 6 of the Convention;

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

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than 15 May 2004, the amount of 2,000 KM by way of compensation for non-pecuniary damages;

7. unanimously, 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 sum stated in conclusion no. 6 or any unpaid portion thereof from 15 May 2004 until the date of settlement in full; and

8. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court, not later than 15 October 2004, on the steps taken by it to comply with the above orders.

(signed)
J. David Yeager
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 12 May 2000)

Case no. CH/98/724

Dragan MATOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 April 2000 with the following members present:

Mr. Giovanni GRASSO, Acting President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Anders MÅNSSON, 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 Article VIII(2) and Article 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 descent from Bijeljina, Republika Srpska. He is currently in prison in Bijeljina. On 31 January 1993 he was arrested for the murder of two persons. On 30 December 1993 the Military Court in Bijeljina found the applicant guilty and sentenced him to death. After six years of appeals, decisions quashing conviction and sentence, renewed convictions and death sentences, on 22 November 1999 the Supreme Court of Republika Srpska commuted the death sentence into a twenty years prison sentence.

2. The application raises issues under Article 6 of the European Convention on Human Rights, while the matter under Article 1 of Protocol No. 6 to the Convention and Article 2 paragraph 1 of the Convention is solved.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was brought before the Chamber through the Organisation for Security and Cooperation in Europe ("OSCE") on 26 June 1998 and registered on the same day. Additional information was submitted by the OSCE on 10 July 1998. The applicant is represented by Ms. Nadežda Milošević practising in Bijeljina.

4. On 17 July 1998 the Chamber decided to transmit the case to the respondent Party for observations on the admissibility and merits. There was no response from the respondent Party.

5. On 19 October 1998 the Chamber informed the applicant that the respondent Party had not submitted any observations. The applicant was in turn invited to submit any further written observations, but did not do so.

6. On 16 June 1999 both parties were requested to submit further information and relevant documents. On 30 June 1999 a reply by the respondent Party was received. A letter from the applicant was received on 5 July 1999.

7. The Chamber deliberated on the admissibility and merits of the case on 10 June, 9 July and 7 September 1999 and on 10 and 11 February 2000 and 6 April 2000. It adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

A. Particular facts of the case

8. The facts of this case are essentially not in dispute and may be summarised as follows. As to the facts in paragraph 13 the Chamber has relied on information supplied by the OSCE.

9. By a judgement of the Military Court in Bijeljina of 30 December 1993 the applicant, who at the time of the crime held the rank of "junior sergeant in reserve", was convicted of having murdered two persons and sentenced to death. The Court relied on Article 36 paragraph 2(6) of the Criminal Law of Republika Srpska – special part.

10. On 26 August 1994 the Supreme Military Court in Sarajevo annulled the decision of the Military Court, sent back the case to the latter court for re-trial and ordered that an expert opinion on the mental state of the accused at the time of the criminal acts, an autopsy of one of the victims and an opinion by a ballistic expert be obtained.

11. On 11 February 1997 the Military Court in Bijeljina, at the conclusion of the renewed proceedings, again sentenced the applicant to death.

12. In May 1997 the applicant appealed to the Supreme Military Court in Zvornik against the

judgment of 11 February 1997. The appeal was received by the Supreme Military Court on 9 July 1997.

13. In a meeting with the OSCE on 12 February 1998, the judge of the Supreme Military Court handling the case indicated that the Court wished to impose a prison sentence longer than was possible under the law as it stood. The delay in the proceedings was due to the fact that the new Criminal Law of the Republika Srpska, which would allow for a penalty heavier than 15 years imprisonment in lieu of the death penalty, had not yet been adopted. In a meeting with the OSCE in June 1998, the Supreme Military Court stated that commuting the sentence to 15 years imprisonment would be too light a sentence for a crime of that gravity, and that the Court would wait for a change of the law, providing for a longer term of imprisonment. The President of the Supreme Military Court added that another reason for the failure to consider the applicant's case was the limited resources the Court.

14. However, on 6 April 1999 the Supreme Military Court in Zvornik confirmed the judgment of the Military Court in Bijeljina of 11 February 1997. It reasoned that in the applicant's case the death penalty was in accordance with Article 2 of Protocol No. 6 to the Convention because the crime in question had been committed during the war.

15. The applicant appealed against the sentence, asking that the death sentence be commuted to a sentence of imprisonment. On 22 November 1999 the Supreme Court of Republika Srpska accepted the appeal and commuted the death sentence to a twenty years prison sentence. It stated:

> "in the present legal situation, it is not possible to sentence someone to the death penalty for such a criminal act. It is forbidden by the provisions of the European Convention on Human Rights, which has to be applied according to the provisions of Article II paragraph 2 of the Constitution of Bosnia and Herzegovina, which entered into force on 14 December 1995. That is the main reason for which this Court accepted the appeals, modified the first and second instance judgments in the part of the decision on sentences, and instead of the death penalty sentenced the convicted persons to a sentence of 20 years imprisonment..."

B. Relevant domestic law

1. Continuation of laws enacted prior to the General Framework Agreement

16. Under Article 2 of Annex II to Constitution of Bosnia and Herzegovina in Annex 4 to the General Framework Agreement, all laws, regulations and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution of Bosnia and Herzegovina 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.

2. The Law on Military Courts

17. Article 1 of the Law on Military Courts, which entered into force on 8 January 1994 (Official Gazette of the Republika Srpska – hereinafter "OG RS" – nos. 27/93 and 8/96) reads, insofar as relevant, as follows:

> "Ordinary military courts have competence to adjudicate criminal offences of military personnel and certain criminal offences of other persons under this law."

18. Article 11 paragraph 1(4) reads, insofar as relevant, as follows:

> "Military courts are competent to try ... professional non-commissioned officers and officers ..., students of military schools and members of the reserve army while serving under compulsory orders in respect of all criminal offences ..."

19. Article 20 paragraph 1(1) reads as follows:

> "The Supreme Military Court decides upon appeal against decisions of military courts in

cases provided by the law."

20. Article 76 reads as follows:

"Military courts shall bring to an end the first instance proceedings, in accordance with previously provided competence in all cases in which the indictment took effect."

3. The Law on Regular Courts

21. The Law on Regular Courts (OG RS no. 22/96), Article 22 paragraph 3(a), reads as follows:

"The Supreme Court is competent to decide upon appeals against the second instance judgments of the Supreme Military Court if the judgment imposes the death penalty or imprisonment of 20 years or if it confirms the first instance judgment pronouncing such penalty."

4. The Criminal Law of the Republika Srpska

22. The Criminal Law of the Republika Srpska - special part (OG RS nos. 15/92, 4/93, 17/93, 26/93, 14/94 and 3/96), Article 36 paragraph 2 reads, insofar as relevant, as follows:

"Imprisonment of at least ten years or the death penalty shall be imposed on a person who:
....
(6) commits two or more murders of the first degree."

23. The Criminal Law of the Republika Srpska (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 44/76, 34/84, 74/87, 57/89, 38/90, 45/90; and OG RS nos. 12/93, 19/93, 26/93, 14/94 and 3/96), Article 38 reads, insofar as relevant, as follows:

"1. The punishment of imprisonment may not be shorter than fifteen days nor longer than fifteen years.
2. For crimes which carry the death penalty, the court may also pronounce a sentence of twenty years imprisonment.
...."

The combined effect of these two provisions is that if a person is found guilty of two first degree murders he can be convicted to between ten or fifteen years imprisonment or the death penalty. The latter may be commuted into a twenty-year prison term.

IV. COMPLAINTS

24. The applicant complains that the infliction of the death penalty violated Article 1 of Protocol No. 6 to the Convention and Article 2 paragraph 1 of the Convention.

25. The applicant also alleges that the proceedings before the Military Court in Bijeljina, concluded on 30 December 1993, were not conducted properly and that the judges who adjudicated the case did so erroneously, under political pressure and influence of bribes. He further alleges that, during the entire criminal proceedings, his human rights were violated by newspaper interviews given by judges, representing him as being criminal, "Ustaša" and maniac. Finally, he complains that the proceedings before the courts have not been conducted with reasonable speed.

V. SUBMISSIONS OF THE PARTIES

26. The respondent Party did not make any submissions regarding the admissibility or the merits of the application. In its letter of 30 June 1999 it explained the legal grounds on which the applicant

was judged by military courts and submitted the relevant judgments in the case.

27. The applicant maintains his complaints.

VI. OPINION OF THE CHAMBER

A. Admissibility

28. Before considering the application on the merits the Chamber shall take into account the admissibility criteria set out in Article VIII of the Agreement.

1. The Chamber's competence *ratione temporis*

29. The Chamber notes that the applicant's complaints relate in part to his conviction in 1993 and thus to events which occurred before 14 December 1995, when the Agreement entered into force. In accordance with generally accepted principles of law the Agreement cannot be applied retroactively (see case no. CH/96/1, *Matanović*, decision on admissibility of 13 September 1996, Decisions on Admissibility and Merits 1996-1997). The Chamber must confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date (see case no. CH/97/30, *Damjanović*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997). In so far as the applicant complains that his rights have been violated after 14 December 1995 his complaints are within the competence of the Chamber *ratione temporis* and are not incompatible with Article VIII(2)(c) of the Agreement.

30. The Chamber finds no other reasons to declare the application inadmissible. It concludes therefore that the application should be accepted and examined on its merits in so far as it relates to violations of the applicant's human rights which are alleged to have occurred or have been threatened to occur since the Agreement came into force on 14 December 1995.

2. Matter solved within the meaning of Article VIII(3) of the Agreement

31. According to Article VIII(3) of the Agreement, the Chamber may at any point decide to strike out an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the case. In all these situations, however, a decision to strike out an application must be consistent with the objective of respect for human rights.

32. In the present case, the Chamber notes that, on 22 November 1999, the Supreme Court of the Republika Srpska accepted the applicant's appeal and commuted the death sentence into a twenty-year prison sentence. Therefore, any violation of the applicant's right to life and not to be subjected to the death penalty was remedied.

33. Accordingly, the Chamber concludes that this part of the application has been resolved. In these circumstances it is no longer justified to continue the examination of this part of the case. Moreover, such an outcome would not be inconsistent with the objective of respect for human rights.

B. Merits

34. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by Republika Srpska of its obligations under the Agreement.

35. Article 6 paragraph 1 of the Convention, in so far as relevant, provides as follows:

> "In the determination of .... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law."

1. Impartial tribunal

36. The applicant alleges that, during the proceedings, judges who took part in his case at first and second instance made statements in the press to the effect that the applicant was a criminal, "Ustaša" and maniac.

37. The Chamber invited the applicant to provide evidence of these allegations. The applicant's representative replied in a letter of 5 July 1999 that such statements had been published in the press at all stages of the criminal proceedings. She listed newspapers in which they had been published. She committed to provide the Chamber with the newspaper articles and other necessary evidence within a short time-limit.

38. Neither the applicant nor his representative, however, offered any such evidence, nor did they explain why they were not in a position to do so. The Chamber cannot find any evidence as to a lack of impartiality of the court on its own motion.

39. The Chamber finds therefore that there has been no violation of the applicant's right to a trial before an impartial tribunal.

2. Fair trial

40. The applicant submits that, in the renewed first instance proceedings, the president of the Court committed numerous errors in order to justify the infliction of the death penalty. He submits that the sketch of the scene of the crime was made incorrectly, that the whole incident was erroneously reconstructed and that the presentation of evidence by the court was incorrect.

41. In accordance with well-established jurisprudence of the European Court on Human Rights, the Chamber has previously held that it is not within its province to substitute its own assessment of the facts for that of the domestic courts (see case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 10, Decisions August-December 1999). Only where it is alleged or apparent that the evaluation of evidence by the domestic court has been grossly inadequate and devoid of the appearance of fairness, the Chamber might examine the establishment of the facts by the domestic court (see case no. CH/98/638, *Damjanović*, decision on admissibility and merits delivered on 11 February 2000, paragraphs 80-82). In the present case, the Chamber cannot on the evidence presented to it, find that there were any such deficiencies in the domestic proceedings. Thus it sees no reason to examine the establishment of the facts by the domestic courts.

42. The Chamber finds therefore that there has been no violation of the applicant's right to a fair trial.

3. Length of proceedings

43. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The Chamber finds that, considering its competence *ratione temporis,* it can assess the length of the proceedings only after 14 December 1995. It may, however, take into account what stage the proceedings had reached and how long they had lasted before that date.

44. In the present case, the renewed proceedings had lasted already fourteen months when the Agreement entered into force. The first instance proceedings were concluded on 11 February 1997 by the pronouncement of the death penalty against the applicant. The proceedings before the second instance, the Supreme Military Court of the Republika Srpska, were initiated by the applicant's appeal on 9 July 1997 and the judgment was issued on 6 April 1999. The third instance proceedings were concluded before the Supreme Court of the Republika Srpska on 22 November 1999. To sum up, the proceedings in the criminal case lasted, after 14 December 1995, three years and eleven months.

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

46. The Chamber is of the opinion that this is indeed a complex case considering the seriousness of the committed crime and the sentence pronounced. In the course of the first instance proceedings the court was presented with various evidence: such as psychiatric expertise, exhumation attempts, ballistic expertise, reconstruction of the incident, for which it needed a certain period of time to consider. Nevertheless, the Chamber recalls that the case was pending before the Supreme Military Court from 9 July 1997 to 6 April 1999, i.e. for about one year and nine months. Apparently, the delay before this Court was due to the fact that it was awaiting amendments to the Criminal Law of the Republika Srpska (see paragraph 13 above). Also, the President of the Supreme Military Court referred to the limited resources at the Court's disposal. The Chamber considers that none of these explanations justifies the length of proceedings before that Court, despite the relative complexity of the case. Instead, having regard to the time the case was pending before the Supreme Military Court and the overall length of the proceedings, the Chamber finds that the case was not examined within a reasonable time.

47. The Chamber finds therefore that there has been a violation of Article 6 paragraph 1 of the Convention in relation to the length of the criminal proceedings against the applicant.

VII. REMEDIES

48. In accordance with Article XI(1)(b) of the Agreement, the Chamber must next address the question which steps should be taken by the respondent Party to remedy the established breaches of the Agreement. With regard to this, the Chamber shall consider orders to cease and desist, pecuniary compensation and provisional measures.

49. The Chamber notes that in accordance with its order for organisation of the proceedings in the case the applicant was entitled to claim compensation. He did not do so.

50. The Chamber notes that it has found a violation of the applicant's right to a trial within a reasonable time. Having in mind that in the course of the proceedings before the Chamber, the criminal proceedings were ended before the national court by the issuance of a final decision commuting the death sentence into twenty years' imprisonment, and that the applicant receives full credit for the time spent in detention before the decision of the Supreme Court, the Chamber considers that the finding of a violation of the applicant's rights as guaranteed by Article 6 paragraph 1 of the Convention constitutes a sufficient remedy.

VIII. CONCLUSIONS

51. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible the application under Article 6 of the European Convention on Human Rights in so far as it relates to events after 14 December 1995;

2. unanimously, to declare inadmissible the application in so far as it relates to events before 14 December 1995;

3. unanimously, to strike out the part of the application relating to alleged violations of Article 2 paragraph 1 of the Convention and Article 1 of Protocol No. 6 to the Convention;

4. unanimously, that there has been no violation of Article 6 paragraph 1 of the Convention regarding the applicant's right to a fair trial before an impartial tribunal;

5. unanimously, that the criminal proceedings against the applicant was not concluded within a reasonable time and that there has been a violation of Article 6 paragraph 1 of the Convention in this respect, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement; and

6. unanimously, that the finding of a violation of the applicant's rights in the present decision constitutes an adequate remedy.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
Acting President of the Chamber

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 December 1999)

Cases nos.
CH/98/752, CH/98/827, CH/98/828, CH/98/847,
CH/98/848, CH/98/1102, CH/98/1104, CH/98/1114, CH/98/1117,
CH/98/1119, CH/98/1120, CH/98/1121, CH/98/1125,
CH/98/1128, and CH/98/1129

Mirsada BAŠIĆ, Sakib GALIĆ, Hikmet and Muharema BEGOVIĆ, Ismet MISIMOVIĆ, Agan AHMETAGIĆ, Hajrija GANIĆ, Emir KOLARIĆ, Mujo ZUKANOVIĆ, Mujaga HADŽIĆ, Atif GOLUBIĆ, Haso SAMARDŽIĆ, Nedžad HADŽIHAFIZOVIĆ, Šuhra RIZVIĆ, Muharem ĆEHAJIĆ, and Mehmed BAHIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 December 1999 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. Anders MÅNSSON, 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 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 applicants are citizens of Bosnia and Herzegovina of Bosniak descent. They are owners of real property in the Gradiška area in the Republika Srpska, who were forced to leave them during the war. Their properties are or were occupied by refugees and internally displaced persons of Serb origin. Most of the applicants left the Republika Srpska during the war and have now returned to the area. Three of the applicants have regained possession of their properties.

2. The cases concern their attempts before various authorities of the Republika Srpska to regain possession of their property. The applicants have taken all or some of the following steps to this end: applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Gradiška ("the Commission") and the Ministry for Refugees and Displaced Persons ("the Ministry") under the Law on the Use of Abandoned Property which entered into force in February 1996 ("the old law", see paragraphs 85-93 below), initiating proceedings before the Court of First Instance in Gradiška ("the Court"), applying to the Commission under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property which entered into force in December 1998 ("the new law", see paragraphs 94-108 below) and applying to various political institutions of the Republika Srpska. The Commission is competent to decide on applications for repossession of property under both the old and new laws. The facts of each individual case are set out at Section III below.

3. The cases raise issues principally under Articles 6 and 8 of the European Convention on Human Rights, under Article 1 of Protocol No. 1 to the Convention and under Article II(2)(b) of the Agreement in relation to discrimination in the enjoyment of the above-mentioned rights.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between 3 July and 26 August 1998 and registered between 9 July and 27 August 1998. The applicants are all represented by the legal assistance centre "Terra" in Gradiška.

5. A number of the applicants requested that the Chamber order the respondent Party as a provisional measure that they be allowed to regain possession of their properties. At its session in December 1998 the Second Panel of the Chamber decided to reject such requests where they were made and to transmit the cases to the respondent Party pursuant to Rule 49(3)(b) of the Rules of Procedure for its observations on their admissibility and merits. The respondent Party did not submit any observations within the time-limit set by the Chamber.

6. On 16 March 1999, the applicants were requested to submit any further observations or requests for compensation or other relief they wished to make. On 20 April 1999 such further observations as were received by the Chamber were sent to the respondent Party for its further observations.

7. On 19 March 1999 the observations of the respondent Party on the admissibility and merits of the cases were received by the Chamber, outside the time-limit set by the Chamber. The Chamber decided to accept these observations notwithstanding this fact. On 19 April 1999 the representatives of the applicants submitted observations in reply.

8. On 21 June 1999 further observations of the respondent Party were received. These were sent to the representatives of the applicants. On 23 August 1999 the Chamber wrote to the representatives of the applicants requesting a factual update on the cases. This update was received by the Chamber on 15 October 1999 and sent to the respondent Party for information. A further submission of the respondent Party, containing further observations on the claims for compensation made by the applicants was received on 27 October 1999. On 6 December 1999 the Chamber decided not to accept these further observations, as the respondent Party had already submitted observations on this point on 21 June 1999.

9. The Chamber deliberated on the admissibility and merits of the applications on 8 September and 3 November 1999. On this second date it decided to join the applications. On 6 December 1999 it adopted the present decision.

III. FACTS

A. The facts of the individual cases

1. Case no. CH/98/752 Mirsada Bašić

10. The applicant, together with her husband, is the owner of land in Gradiška registered under number 2379/6 as evidenced by extract number 1749 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left Gradiška during the war and returned there after it ended. At that time, her property was occupied by refugees of Serb origin from Croatia. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. This document is issued to permanent residents or citizens of the Republika Srpska and it constitutes proof of permanent residence in that Entity.

11. On 12 May 1998 the applicant applied to the Commission under the old law to regain possession of her property. She did not receive any reply. She made additional submissions regarding this application on 26 May and 17 June 1998. She has not received any decision.

12. On 7 August 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 22 December 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The applicant appealed to the Regional Court in Banja Luka on 5 January 1999. There has been no decision on this appeal to date.

13. On 29 December 1998 the applicant applied to the Commission under the new law to regain possession of her property. On 3 March 1999 it issued a decision entitling her to reenter the property. On 5 March 1999 the applicant regained possession of her property in pursuance of that decision.

2. Case no. CH/98/827 Sadik Galić

14. The applicant is the owner of land in Gradiška registered under number 510/4. A house and certain additional accessory buildings are situated on the land. The applicant's mother remained in the house throughout the war. She currently occupies one room in the house located on the property. The remainder of the property is occupied by refugees of Serb origin from Croatia. The applicant, who went to Germany during the war, has recently returned to Gradiška.

15. On 30 July 1997 the applicant's mother applied to the Commission under the old law to regain possession of the property. She made additional submissions regarding this application on 4 November 1997, 2 February 1998 and 12 March 1998. No decision has been received to date.

16. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

17. On 1 March 1999 the applicant and his mother applied to the Commission under the new law to regain possession of the property. On 19 July 1999 it issued a decision entitling them to reenter the property. The date set for such reentry has passed. They have sought execution of this decision but have not yet regained possession.

3. Case no. CH/98/828 Hikmet and Muharema Begović

18. The applicants are the joint owners of land in Gradiška registered under number 94/2. A house and certain additional accessory buildings are situated on the land. The applicants left the

area of Gradiška during the war and returned there after the war ended. They have obtained identity cards issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Srbobran/Donji Vakuf.

19. On 31 March 1998 the applicants applied to the Commission under the old law to regain possession of their property. They made additional submissions regarding this application on 29 April and 18 June 1998. They have not received any decision.

20. On 6 July 1998 they initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 23 September 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The applicants appealed to the Regional Court in Banja Luka on 8 October 1998. According to the information available to the Chamber, there has been no decision on this appeal to date.

21. On 4 January 1999 the applicants applied to the Commission under the new law to regain possession of their property. On 20 March 1999 it issued a decision entitling them to reenter the property. The date set for such reentry was 4 April 1999. The applicants did not succeed in regaining possession of the property on that date. On 21 May 1999 the current occupants of the property lodged a complaint against this decision. A decision on this complaint has not yet been issued. On 18 August 1999 the applicants sought the execution of the decision of 20 March 1999.

4. Case no. CH/98/847 Ismet Misimović

22. The applicant is the owner of land in Gradiška registered under number 2319/01 as evidenced by extract number 2213/92 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there in 1998. He has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by refugees or displaced persons of Serb origin.

23. On 24 March 1998 he applied to the Commission under the old law to regain possession of his property. He made additional submissions regarding this application on 24 April, 27 May and 3 August 1998. He has not received any decision.

24. On 15 June 1998 he initiated proceedings against the current occupants of the property before the Court, seeking their eviction. According to the information provided to the Chamber, there has been no decision on these proceedings to date.

25. On 4 January 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 4 April 1999. The applicant did not succeed in regaining possession of the property on that date and on 5 April 1999 he requested execution of the decision.

5. Case no. CH/98/848 Agan Ahmetagić

26. The applicant is the owner of land in Gradiška registered under number 4. A house and certain additional buildings are situated on the land. He has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia. The applicant and his wife live in an outhouse situated on the property, having been forced out of their house during the war by the current occupants. They did not leave the territory of the Republika Srpska during the war.

27. On 24 April 1998 he applied to the Commission under the old law to regain possession of his property. He made additional submissions regarding this application on 27 May and 1 July 1998. He has not received any decision.

28. On 31 July 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 24 November 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The applicant appealed to the Regional Court in Banja Luka against this decision. According to the information provided to the

Chamber, there has been no decision on these proceedings to date.

29. In January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 28 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 28 June 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

6. Case no. CH/98/1102 Hajrija Ganić

30. The applicant is the owner of land in Gradiška registered under number 2414. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there in 1998. She has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Sanski Most. The application was originally lodged by the applicant's husband, Mr. Ferid Ganić. However, Mr. Ganić passed away on 24 January 1999. Ms. Hajrija Ganić requested that she continue the proceedings as his widow and successor. The Chamber accordingly considers Ms. Ganić to be the applicant in the case.

31. On 13 May 1998 Mr. Ganić applied to the Commission under the old law to regain possession of the property. He made additional submissions regarding this application on 30 June and 28 July 1998. No decision has been received.

32. On 6 August 1998 Mr. Ganić initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 22 December 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. On 5 January 1999 Mr. Ganić appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on these proceedings to date.

33. On 5 January 1999 Mr. Ganić applied to the Commission under the new law to regain possession of the property. On 20 March 1999 it issued a decision entitling his widow to reenter the property. The date set for such reentry was 5 April 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

7. Case no. CH/98/1104 Emir Kolarić

34. The applicant is the owner of land in Gradiška registered under number 766/2. A house, orchard and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. He has obtained an identity card issued by the authorities of the Republika Srpska. The property was previously occupied by Bosnian Serb displaced persons from Srbobran/Donji Vakuf.

35. On 27 April 1998 he applied to the Commission under the old law to regain possession of his property. He made an additional submission regarding this application on 7 July 1998. He has not received any decision.

36. On 5 August 1998 he initiated proceedings against the current occupants of the property before the Court, seeking their eviction. According to the information provided to the Chamber, there has been no decision on these proceedings to date.

37. In early 1999 the applicant applied to the Commission under the new law to regain possession of his property. It issued a decision entitling him to do so and on 15 May 1999 he regained possession of his property on the basis of the decision.

8. Case no. CH/98/1114 Mujo Zukanović

38. The applicant is the owner of land in Gradiška registered under number 774/5. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned after it ended. He has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

39. On 1 June 1998 he applied to the Commission under the old law to regain possession of his property. He made an additional submission regarding this application on 14 August 1998. He has not received any decision on this application.

40. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

41. In early 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 11 April 1999 it issued a decision entitling him to reenter the property. The date set for such reentry has passed. The applicant did not succeed in regaining possession of the property. He has requested execution of the decision.

9. Case no. CH/98/1117 Mujaga Hadžić

42. The applicant is the owner of land in Gradiška registered under number 290. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned after it ended. He has obtained an identity card issued by the authorities of the Republika Srpska. The property is currently occupied by refugees or displaced persons of Serb origin.

43. On 19 June 1998 the applicant applied to the Commission under the old law to regain possession of his property. He made an additional submission regarding this application on 15 July 1998. He has not received any decision.

44. On 16 September 1998 the applicant initiated proceedings against the current occupants of the second property before the Court, seeking their eviction. According to the information provided to the Chamber, there have been no developments in these proceedings to date.

45. On 4 January 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 18 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 4 April 1999. The applicant did not succeed in regaining possession of the property and on 20 August 1999 he requested execution of the decision.

10. Case no. CH/98/1119 Atif Golubić

46. The applicant is the owner of land in Gradiška registered under number 242 as evidenced by extract number 1849/98 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. The applicant has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

47. On 1 June 1998 he applied to the Commission under the old law to regain possession of his property. He made an additional submission regarding this application on 4 August 1998. He has not received any decision.

48. On 4 August 1998 he initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 22 December 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. On 30 December 1998 the applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

49. On 4 January 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 17 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 29 March 1999. The applicant did not succeed in regaining possession of the property on that date and on 15 April 1999 he requested execution of the decision.

11. Case no. CH/98/1120 Haso Samardžić

50. The applicant is the owner of land in Gradiška registered under number 249. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. He has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Sanski Most.

51. On 4 May 1998 the applicant applied to the Commission under the old law to regain possession of the property. The applicant made additional submissions regarding this application on 10 June, 2 July and 18 August 1998. He has not received any decision.

52. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

53. In early 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 28 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 28 June 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

12. Case no. CH/98/1121 Nedžad Hadžihafizović

54. The applicant is the owner of land in Gradiška registered under number 590 as evidenced by extract number 1256/98 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Sanski Most.

55. On 12 June 1998 the applicant applied to the Commission under the old law to regain possession of his property. The applicant made an additional submission regarding this application on 18 August 1998. He has not received any decision.

56. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

57. In early 1999 the applicant applied to the Commission under the new law to regain possession of his property. In April 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was in July 1999 (exact date unknown). The applicant did not succeed in regaining possession of the property on that date and on 20 August 1999 he requested execution of the decision.

13. Case no. CH/98/1125 Šuhra Rizvić

58. The applicant is the owner of land in Gradiška registered under number 662/2 as evidenced by extract number 68/97 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant remained on the territory of the Republika Srpska throughout the war. She lived in the house situated on the property until September 1995, when she was illegally evicted by the current occupants, who are refugees of Serb origin from Croatia.

59. On 13 November 1997 she applied to the Commission under the old law to regain possession of her property. She made additional submissions regarding this application on 16 January, 13 February and 9 March 1998. She has not received any decision.

60. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

61. In January 1999 the applicant applied to the Commission under the new law to regain possession of her property. On 18 March 1999 it issued a decision entitling her to regain possession

of the property. The date set for such reentry was 28 March 1999. The applicant did not succeed in regaining possession of the property on that date and on 14 April 1999 she requested execution of the decision.

14. Case no. CH/98/1128 Muharem Ćehajić

62. The applicant is the owner of land in Gradiška registered under number 776. The applicant is also the part owner of adjoining land, registered under number 164. A house and certain additional accessory buildings are situated on both parcels of land, which adjoin each other and form a unit. The applicant's brother is the other owner of the second parcel of land. The applicant left the area of Gradiška during the war and returned there after it ended. The applicant has obtained an identity card issued by the authorities of the Republika Srpska. The property was previously occupied by refugees of Serb origin from Croatia.

63. On 6 August 1998 the applicant applied to the Commission under the old law to regain possession of his property. He has not received any decision.

64. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

65. In early 1999 the applicant applied to the Commission under the new law to regain possession of his property. He received a decision in his favour and on 1 July 1999 he regained possession of it on the basis of that decision.

15. Case no. CH/98/1129 Mehmed Bahić

66. The applicant is the owner of land in Gradiška registered under parcel number 43/07 as evidenced by extract number 9/94 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. He has obtained an identity card issued by the authorities of the Republika Srpska. The property is occupied partially by Bosnian Serb displaced persons from Srbobran/Donji Vakuf and partially by refugees of Serb origin from Croatia.

67. On 26 June 1998 the applicant applied to the Commission under the old law to regain possession of his property. He made additional submissions regarding this application on 3 and 26 August 1998. He has not received any decision.

68. On 29 June 1998 the applicant initiated proceedings against the current occupants of the properties before the Court, seeking their eviction. On 16 November 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. On 18 December 1998 the applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

69. In January 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 28 March 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

B. Relevant legal provisions

1. General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7

70. Paragraph 1 of Article I of Annex 7 states, insofar as relevant as follows:

> "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 …. The early return of refugees and displaced persons is an

important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries."

71. Article XIII of Annex 7, entitled "Use of Vacant Property" states:

"The Parties, after notification to the Commission and in coordination with the UNHCR and other international and nongovernmental organisations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require."

2. Constitution of Bosnia and Herzegovina

72. Article II of the Constitution of Bosnia and Herzegovina ("the BH Constitution"), entitled "Human Rights and Fundamental Freedoms", sets out the mechanism for the protection of human rights and fundamental freedoms within Bosnia and Herzegovina.

73. Article II(1) of the BH Constitution, entitled "Human Rights", reads as follows:

"Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms....."

74. Article II(2) of the BH Constitution, entitled "International Standards", reads as follows:

"The rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

75. Article II(4) of the BH Constitution, entitled "Non-Discrimination", reads as follows:

"The enjoyment of the rights and freedoms (guaranteed by the BH Constitution) shall be secured to all persons in Bosnia and Herzegovina 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."

76. Article II(5) of the BH Constitution, entitled "Refugees and Displaced Persons", reads as follows:

"All refugees and displaced persons have the right freely to return to their homes of origin. ...."

77. Article II(6) of the BH Constitution, entitled "Implementation", reads as follows:

"Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above."

3. Constitution of the Republika Srpska

78. Title II of the Constitution of the Republika Srpska ("the RS Constitution") is entitled "Human Rights and Freedoms".

79. Article 10 of the RS Constitution reads as follows:

"Citizens of the Republic are equal in the enjoyment of rights, freedoms and duties, they are equal before the law and shall enjoy legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status or other personal attributes."

80. Article 16 of the RS Constitution reads as follows:

> "Everyone has the right to equal protection of their rights before the courts and other state organs and organisations.
>
> Everyone has the right to appeal or otherwise institute legal proceedings against a decision concerning his rights or legal interests."

81. Article 17 of the RS Constitution reads as follows:

> "Everyone has the right of redress for loss caused by illegal or unjust actions by official persons or state organs or institutions acting in an official capacity....."

82. Article 56 of the RS Constitution reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated, subject to payment of fair compensation."

83. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

> "During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

84. Article 121 of the RS Constitution reads as follows:

> "The judicial function is performed by the Courts. The Courts are independent and decide upon the basis of the Constitution and laws.
>
> The Courts protect human rights and freedoms, established rights and interests of legal entities and legality."

4. The Law on the Use of Abandoned Property

85. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96; "the old law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the old law, insofar as they are relevant to the present cases, are summarised below.

86. Articles 2 and 11 define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

87. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property to persons within the categories set out in Article 15. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

88. Article 15 reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:

- to the families of killed soldiers
- war invalids with injuries in categories I-V
- war invalids with injuries in categories V-X
- qualified workers of whom there is a lack in the Republika Srpska."

89. Article 15A (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

90. Articles 39-42 set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

91. Article 39 reads as follows:

> "The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia."

92. Article 40 reads as follows:

> "In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.
>
> If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:
>
> - within 30 days from the day the person who was the occupier of the property returns to his property or apartment.
>
> - at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation.
>
> (....)"

93. Article 42 reads as follows:

> "The provisions of Articles 39-41 of this law shall be applied on the basis of reciprocity."

5. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

94. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; "the new law"), as amended, establishes a detailed framework for persons to regain possession of property considered to be abandoned. The new law puts the old law out of force.

95. Article 2 states that all decisions made under the old Law granting temporary or permanent rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new Law.

96. Article 3 gives the owner, possessor or user of real property who abandoned such property

the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991 or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

97. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as "temporary users") in order to allow the previous owner, possessor or user to return.

98. The responsible body shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the new law to be provided with alternative temporary accommodation. If it determines that this is the case, the relevant body of the Ministry (i.e. the local Commission) shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

99. Any failure of the responsible authority to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

100. If a temporary user of a property occupies it without a legal basis, the Ministry is not obliged to provide him or her with alternative accommodation.

101. Article 7 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Article 8 states that such claims may be filed with the responsible body of the Ministry. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

102. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

103. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Procedures (see paragraphs 108-113 below) and treated as an expedited procedure.

104. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances, which shall be agreed upon by the Office of the High Representative. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

105. Article 12 requires that the decision of the Commission be delivered to the current occupants of the property concerned. An appeal may be lodged against a decision within fifteen days of its receipt. However, the lodging of an appeal does not suspend the execution of the decision.
<
106. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission"). In the event that an application by a claimant has been rejected by the responsible body (i.e. the local Commission) on either formal or material grounds, the proceedings before the responsible body may be suspended pending the final decision of the Annex 7 Commission, if the Annex 7 Commission so requests. Any decision of the Annex 7 Commission shall be enforced by the appropriate authorities of the Republika Srpska.

107. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on

the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

6. The Law on Administrative Procedures

108. The Law on Administrative Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

109. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Procedures.

110. Chapter XVII (Articles 270 – 288) is concerned with the procedure for enforcement of rulings and conclusions.

111. Article 270 states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of any appeal expires without any such appeal having been submitted.

112. Article 274 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

113. Article 275 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. of reinstatement to property) is to be carried out by an administrative procedure.

7. The Law on Administrative Disputes

114. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS no. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25 paragraph 1, if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued on the appeal in response to such a reminder within 7 days of it being lodged, the applicant may initiate an administrative dispute before the Supreme Court of the Republika Srpska in respect of this failure to decide upon the appeal.

8. The Law on Regular Courts

115. The Law on Regular Courts (OG RS nos. 22/96 and 25/96) regulates the court system in the Republika Srpska.

116. Article 2 reads as follows:

> "The courts shall protect liberties and rights of citizens, lawfully established rights and interests of legal subjects and shall safeguard constitutionality and legality."

117. Article 17 reads as follows:

> "The Court of First Instance ("*Osnovni Sud*") shall be competent:
>
> (...)

2) in civil suits, to try at first instance;
a) civil legal disputes,
b) disputes in respect of disturbance of property
(….)."

118. Article 21 reads as follows;

"The Regional Court ("*Okružni Sud*") shall be competent:

1) to decide on appeals against decisions of basic courts and decisions of magistrates (….)."

IV. COMPLAINTS

119. The applicants in all cases complain that their right to respect for, *inter alia*, their home as guaranteed by Article 8 of the Convention has been violated. In addition, all of them complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, has been violated.

120. All of the applicants, except for the applicants in case no. CH/98/828, Mr. and Ms. Begović, allege violations of their right to an effective remedy as guaranteed by Article 13 of the Convention and not to be discriminated against in the enjoyment of those rights, as guaranteed by Article 14 of the Convention.

V. FINAL SUBMISSIONS OF THE PARTIES

A. The respondent Party

121. The respondent Party submitted that the Chamber was not competent to decide upon the applications. It stated that the applications are, in essence, requests for the return of real property into their possession. Such claims should be decided by the Annex 7 Commission or the competent organ in the Republika Srpska under the new law. The respondent Party further claimed that the applicants had not exhausted the domestic remedies available to them and that accordingly the Chamber should refuse to accept their applications in accordance with the terms of Article VIII(2)(a) of the Agreement.

122. In conclusion, the respondent Party submitted that the Chamber should refuse to accept the applications or postpone consideration of them until the domestic remedies available to the applicants had been exhausted.

B. The applicants

123. The applicants maintain their complaints. In addition, those that have not yet regained possession of their property state that they have exhausted all of the domestic remedies available to them without success and that as a result the Chamber is competent to decide upon the applications. They deny that their requests to regain possession of their properties should be decided solely by the Annex 7 Commission. They claim that they have the right under the new law to regain possession of their property, but that most of them have been unable to realise this right due to the inaction of the authorities of the Republika Srpska. All of the applicants maintain their claims for compensation.

VI. OPINION OF THE CHAMBER

A. Admissibility

124. Before considering the merits of the cases the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. Requirement to exhaust effective domestic remedies

125. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. The respondent Party contends that the cases should be declared inadmissible on this ground. It refers to Article 7 of the new law (see paragraph 101 above), stating that all of the applicants have applied to regain possession of their properties under this provision and that the proceedings under this provision are still pending.

126. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but 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 ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

127. The Chamber notes that all of the applicants unsuccessfully applied to the relevant organ under the old Law to regain possession of their properties. Accordingly, they have all sought to avail themselves of this remedy which turned out to be ineffective and illusory in practice.

128. The Chamber further notes that the applicants in nine of the cases also initiated proceedings before the Court in Gradiška against the current occupants of their properties, seeking to regain possession of those properties (the specific situation in respect of each applicant is set out in Section III above). Those applicants who did not initiate such proceedings claimed that the reason for not doing so was the fact that the Court declined to consider the cases on the ground that it did not have jurisdiction over "abandoned property".

129. The Chamber has previously noted that the Supreme Court of the Republika Srpska has held that matters concerning abandoned property are within the sole competence of the Ministry, as such issues should be decided by an administrative procedure rather than by the courts (see case no. CH/98/659 *et al.*, *Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraphs 151–152). Accordingly, having recourse to the courts, as provided for in the Law on Regular Courts (see paragraphs 115-118 above), does not appear to be a remedy at all.

130. The Chamber notes that in all of the cases, the applicants have applied under the new law to regain possession of their properties. All of them have received decisions from the Commission, entitling them to regain possession of their properties within a specified time-period. In three cases the applicants regained possession of their properties on or very soon after the date specified for this in the decision. In the other twelve cases, however, the time-limits for such regaining of possession have not been adhered to.

131. As the Chamber noted in its decision in *Pletilić and others* (*sup. cit.,* paragraph 154) a remedy such as that provided for by the new law could in principle qualify as an effective one. The Chamber notes that all of the applicants have received a decision under the new law in their favour and that three of them have already regained possession of their properties on the basis of such decisions. The Chamber wishes to stress that, whereas the new law aims at putting an end to the ongoing violations of the applicants' rights, it does not provide redress for the past violations of their human rights which they suffered.

132. The Chamber finds, in the circumstances, the requirements of Article VIII(2)(a) of the Agreement have been met.

2. Possibility of seizing the Annex 7 Commission

133. The respondent Party also claimed that the applications should be declared inadmissible as the applicants have not applied to the Annex 7 Commission seeking a decision on their request for the return of their property (see paragraph 121 above).

134. The above provision establishes a mechanism under which persons may be declared to be the lawful owners of real property and authorised to regain possession of that property. It is therefore an extremely important mechanism established for the return of refugees and displaced persons to their properties. Article VIII(2)(d) of the Agreement enables the Chamber to declare an application inadmissible if the same matter is already pending before the Annex 7 Commission. However, in the present cases, none of the applicants has applied to the Annex 7 Commission, but have chosen instead to apply to the Chamber. Therefore, Article VIII(2)(d) is inapplicable in the present cases and they are therefore not inadmissible under that provision.

135. The Chamber further finds that none of the other grounds for declaring the cases inadmissible have been established. Accordingly, the cases are to be declared admissible.

B. Merits

136. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article II(2)(a) of the Agreement

(a) Article 8 of the Convention

137. In their applications to the Chamber, all of the applicants claimed to be victims of a violation of Article 8 of the Convention which reads, insofar as relevant, as follows:

> "1. Everyone has the right to respect for ..., his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

138. The respondent Party did not submit any observations under this provision.

139. The Chamber notes that all of the applicants had lived in the houses situated on their properties and used them as their homes until such times as they were forced to leave. The Chamber has previously held that the links that persons in similar situations as the applicants in the present cases retained to their dwellings were sufficient for them to be considered to be their "homes" within the meaning of Article 8 of the Convention (see, e.g., *Pletilić and others, sup. cit.,* paragraph 165). In addition, the respondent Party did not contest that the properties were to be considered the applicants' homes.

140. It is therefore clear that the properties are to be considered as the applicants' "homes" for the purposes of Article 8 of the Convention.

141. The Chamber notes that all of the applicants were forced to leave their homes, either because they were evicted by private persons or because of fearing for their safety as a result of the hostilities. All of the properties were then occupied by refugees or displaced persons of Serb origin. The majority of these refugees or displaced persons occupied the properties concerned in accordance with decisions of the Commission issued in accordance with the old Law. The applicants in all of the cases where they have been unable to regain possession of their properties have been unable to do so due to the failure of the authorities of the Republika Srpska to deal effectively with their various applications in this regard. Therefore, the respondent Party is responsible for the interference with the rights of all of the applicants to respect for their homes. Only the applicants in cases nos. CH/98/752 Ms. Bašić, CH/98/1104 Mr. Kolarić and CH/98/1128 Mr. Ćehajić have succeeded in regaining possession of their properties. Accordingly, the interference in the other twelve cases is ongoing. This applies also in case no. CH/98/827 Mr. Galić (see paragraphs 14-17 above), where the applicants' mother has regained possession of part of the property.

142. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see *Pletilić and others*, *sup. cit.*, paragraph 168). There will be a violation of Article 8 if any one of these conditions is not satisfied.

143. The majority of the properties were considered to be abandoned in accordance with the old law (see paragraphs 85-93 above). The applicants in certain other cases were illegally evicted by refugees or displaced persons of Serb origin. Moreover, all of the applicants tried to regain possession of their properties in accordance with Articles 39 and 42 of the old law. This law sought to provide for a regime for the administration of abandoned property in the Republika Srpska. In accordance with the provisions of this law, a number of the properties were occupied by refugees and displaced persons of Serb origin. The Chamber has received positive confirmation that eight of the properties were allocated to those persons in accordance with decisions of the Ministry, while the occupants of three properties did not obtain decisions of the Ministry. In the remaining four cases, the Chamber has not been able to obtain such confirmation. However, the Chamber notes that neither the Ministry, during the domestic proceedings initiated by the applicants, nor the respondent Party, during the proceedings before the Chamber, have sought to claim that the Ministry did not allocate the properties concerned in these applications. The Chamber accordingly finds that they were allocated to the current occupants by the Ministry.

144. The Chamber must decide whether the old Law can be considered to be a "law" in the context of Article 8 paragraph 2 of the Convention.

145. The Chamber has previously held that the term "law" is related to certain qualitative criteria of a norm, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (case no. CH/97/46, *Kevešević,* decision on the merits delivered on 10 September 1998, paragraph 52, Decisions and Reports 1998).

146. The Chamber has previously held that the concept of the rule of law contains the following three elements: first, the law must be adequately accessible: a citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee with reasonable certainty the consequences of his actions. Thirdly, a law must provide safeguards against abuse (see, e.g., *Pletilić and others, sup. cit.,* paragraph 172).

147. The Chamber notes that the procedure for regaining of possession was set forth in Articles 39-42 of the old law (see paragraphs 90-93 above). The Chamber has previously held that the old law did not enable a person seeking to regain possession of his or her property to establish what actions he or she must take to do so and that it did not provide any safeguards against possible abuse, but was in itself a source of arbitrariness and abuse (see *Pletilić and others, sup. cit.,* paragraph 173 and *Kevešević, sup. cit.*, paragraph 53).

148. The Chamber finds that the legal provisions in question did not meet the standards required of a "law" under Article 8 paragraph 2 of the Convention. This is in itself sufficient for there to be a finding that there has been, in all cases a violation on these grounds of the applicants' rights as guaranteed by that provision.

149. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

150. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of all of the applicants to respect for their homes as guaranteed by Article 8 of the Convention. This violation is ongoing in twelve of the cases (i.e. in all those except cases nos. CH/98/752 Ms. Bašić, CH/98/1104 Mr. Kolarić and CH/98/1128 Mr. Ćehajić) where the applicants have not yet regained possession of all of their property.

151. The Chamber notes that the new law has been adopted in order to put an end to the violations caused by the old law. The rights of all of the applicants under Article 8 of the Convention were violated by the old law, as it did not meet the standards of a "law" as required by the second paragraph of that provision. The Chamber considers that the new law does meet the requirements of paragraph 2 of Article 8, as it grants the applicants a right to regain possession of their properties. However, the realisation of this right has been delayed in twelve of the cases presently before the Chamber. Accordingly, the conduct of the respondent Party in relation to the applicants in these twelve cases has not been "in accordance with the law" as required by paragraph 2 of Article 8. There is therefore a continuing violation of the rights of the applicants in those twelve cases to respect for their homes and this violation will continue until such time as they actually regain possession of their homes.

(b) Article 1 of Protocol No. 1 to the Convention

152. The applicants complain that their rights to peaceful enjoyment of their possessions have been violated as a result of their inability to regain possession of their properties. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

153. The respondent Party did not submit any observations under this provision.

154. The Chamber finds that the properties concerned constitute the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1. All applicants are in fact exclusive or part owners of the properties.

155. The Chamber considers that the treatment of the applicants' properties in the majority of the cases as abandoned by the authorities of the Republika Srpska and their allocation to third parties for use constitutes or constituted an "interference" with the applicants' rights to peaceful enjoyment of their possessions. The failure of the Republika Srpska to take the necessary steps to enable the applicants to regain possession of their properties also constitutes such an interference.

156. In all of the cases except for the three where the applicants have regained possession of their properties (see paragraphs 10-13, 34-37 and 62-65 above), the interference is still ongoing. This applies also in case no. CH/98/827 Mr. Galić (see paragraphs 14-17 above), where the applicant's mother has only regained possession of certain parts of the property.

157. The Chamber must therefore examine whether the above interferences can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently certain.

158. The Chamber has further found that the old law does not meet the standards of a "law" in a democratic society, as is provided for in Article 1 of Protocol No. 1 (see paragraphs 144-148 above). This is in itself sufficient to warrant a finding that there has also been a violation of that provision.

159. In conclusion, the Chamber finds that there has been a violation of the rights of all of the applicants to peaceful enjoyment of their properties as guaranteed by Article 1 of Protocol No. 1 to the Convention. Again, this violation is ongoing in twelve of the cases where the applicants have not yet regained possession of all of their property, despite their efforts to do so, including under the new law.

160. The Chamber again notes that the new law has been adopted in order to put an end to the violations caused by the old law. The Chamber reiterates, however, that although the new law may provide an effective remedy, it has not, so far, been applied in a manner consistent with Article 1 of Protocol No. 1 in respect of the majority of the cases before it.

(c) Article 6 of the Convention

161. The applicants did not specifically claim that their rights as protected by Article 6 of the Convention had been violated. However, in view of the fact that a number of the applicants complained of the conduct of the proceedings they had initiated at national level, the Chamber raised this issue *proprio motu* when it transmitted the applications to the respondent Party for its observations on their admissibility and merits.

162. Article 6 of the Convention reads 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..."

163. The respondent Party did not submit any observations under this provision.

164. The Chamber recalls that it has held that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (see, e.g., *Pletilić and others, sup. cit.,* paragraph 191).

165. The Chamber notes that the applicants in nine of the cases initiated proceedings before the Municipal Court in Gradiška (the situation in respect of each applicant is set out in Section III above). In those cases where a decision has in fact been issued by the Court, this decision has been to reject consideration of the requests for lack of competence. The Court has stated that matters concerning abandoned property are within the sole competence of the Ministry.

166. The Chamber notes that Article 121 of the RS Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 84 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. Such a removal would require a specific statement to this effect. The Chamber has previously found that in the absence of a specific statement to that effect, the old law did not remove jurisdiction over property that was considered to be abandoned form the Courts (see *Pletilić and others, sup. cit.*, paragraph 194).

167. Nevertheless, the practical effect of the standpoints of the Court is that it has been or would, for the time being at least, be impossible for the applicants to have the merits of their civil actions against the current occupants of their properties determined by a tribunal within the meaning of Article 6 paragraph 1. Accordingly, there has been a violation of the applicants' right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

(d) Article 13 of the Convention

168. Except for one case (no. CH/98/828 Mr. and Ms. Begović) all applicants allege that their right to an effective remedy has been violated. This may be understood as referring to Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

169. In view of its finding that there has been a violation of Article 6 of the Convention (see paragraph 167 above) the Chamber does not deem it necessary to examine the complaints under Article 13 of the Convention.

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

170. All of the applicants, except in case no. CH/98/828 Mr. and Ms. Begović, complained that they had been a victim of discrimination on the ground of their national origin in the enjoyment of the rights guaranteed to them by the Convention. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

> "alleged or apparent 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 arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement...."

171. The respondent Party did not submit any observations under this provision.

172. The Chamber notes that it has already found violations of all of the applicants' rights as protected by Articles 6 and 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention. It must now consider whether the applicants have suffered discrimination in the enjoyment of those rights.

173. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls its jurisprudence. As the Chamber noted in the *Đ.M.* case (case no. CH/98/756, decision on admissibility and merits delivered on 14 May 1999, paragraph 73, Decisions January-July 1999), it is necessary first to determine whether an applicant was treated differently from others in the same or relevantly 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 of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin.

174. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see *Đ.M., sup. cit.,* paragraph 75). Analogous obligations are also contained in the Constitutions of Bosnia and Herzegovina and of the Republika Srpska (see paragraphs 73 and 79 above).

175. The Chamber notes that all of the applicants are of Bosniak origin.

176. The Chamber recalls that the applicants' ownership of the properties in question has never been in dispute. Nevertheless, with the exception of the applicants in cases nos. CH/98/752 Ms. Bašić, CH/98/1104 Mr. Kolarić and CH/98/1128 Mr. Ćehajić, (see paragraphs 10-13, 34-37 and 62-65 above), their attempts to seek assistance from the authorities in order to regain possession of their properties have been unsuccessful, both at the judicial and administrative level.

177. The Chamber notes that all of the applicants sought to regain possession of their properties under the old law. The Chamber has previously concluded that this law was drafted in such a way as to deny to refugees and internally displaced persons any real possibility of regaining possession of their properties, therefore reinforcing the ethnic cleansing which occurred during the war by protecting the refugees and displaced persons of Serb origin who currently occupy the properties concerned in the applications and by seeking to frustrate the efforts of persons who were forced to leave their homes in the Republika Srpska from regaining possession of them (see *Pletilić and others, sup. cit.,* paragraphs 203-205). The experience of the present applicants in their attempts to regain possession of their properties under this law only serves to reinforce this view.

178. In addition, the Chamber has found that the standpoint of the courts in the Republika Srpska (see paragraph 167 above) was such as to deny the applicants their right of access to court. This denial was a consequence of the application by the courts in the Republika Srpska of the old law.

179. In conclusion, the Chamber finds that the passage and application of the old law constitutes discrimination against the applicants in relation to their right to respect for their homes, to peaceful enjoyment of their possessions and of access to court. This discrimination has been based on the ground of national origin in respect of all of the applicants. So far, the new law has largely failed to remedy this situation.

180. The Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VII. REMEDIES

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

182. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicants, who have not already done so, to regain possession of their properties without further delay. All of the applicants have already received decisions from the Commission entitling them to regain possession of their property. Accordingly, the respondent Party must take all necessary steps to enforce those decisions without further delay.

183. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation or other relief within the time-limit fixed by the Chamber. Thirteen of the applicants requested compensation for mental suffering. Ten of those thirteen also requested compensation for the cost of renting another property or for general expenses. Two of the applicants did not make any claim for compensation. The specific situation in respect of each applicant is set out below.

184. Ms. Bašić (CH/98/752) claimed compensation for mental suffering experienced by her and her family due to their inability to return to their home in the sum of 12,500 Convertible Marks (*Konvertibilnih Maraka;* "KM"). She also claimed compensation for the cost of renting another property, in the sum of KM 180 per month for 12 months, totalling KM 2,160. In addition, she claimed KM 1,000 for relocation costs and KM 6,000 for the costs of repairing her home. The total amount of compensation she claimed was therefore KM 21,660.

185. Mr. Galić (CH/98/827) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 12,500. He also claimed compensation of KM 1,500 for other unspecified expenses. The total amount of compensation he claimed was therefore KM 14,000.

186. Mr. and Ms. Begović (CH/98/828) claimed compensation for mental suffering experienced by

them due to their inability to return to their home in the sum of KM 5,000. They also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 10 months, totalling KM 2,000. In addition, they claimed KM 800 for relocation costs. The total amount of compensation they claimed was therefore KM 7,800.

187. Mr. Misimović (CH/98/847) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 27 months, totalling KM 5,400. In addition, he claimed KM 900 for relocation costs. The total amount of compensation he claimed was therefore KM 11,300.

188. Mr. Ahmetagić (CH/98/848) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 12,500. In addition, he claimed KM 2,000 for other unspecified costs. The total amount of compensation he claimed was therefore KM 14,500.

189. Ms. Ganić (CH/98/1102) claimed compensation for mental suffering experienced by her due to her inability to return to her home in the sum of KM 2,500. She also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 11 months, totalling KM 2,200. In addition, she claimed KM 700 for relocation costs. The total amount of compensation she claimed was therefore KM 5,400.

190. Mr. Kolarić (CH/98/1104) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 210 per month for 14 months, totalling KM 2,940. In addition, he claimed KM 700 for other unspecified costs. The total amount of compensation he claimed was therefore KM 8,640.

191. Mr. Zukanović (CH/98/1114) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 17,500. He also claimed compensation in the sum of KM 2,000 for unspecified costs related to his property. The total amount of compensation he claimed was therefore KM 19,500.

192. Mr. Hadžić (CH/98/1117) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 10,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 8 months, totalling KM 1,600. In addition, he claimed KM 1,000 for other unspecified costs. The total amount of compensation he claimed was therefore KM 12,600.

193. Mr. Golubić (CH/98/1119) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 8 months, totalling KM 1,200. In addition, he claimed KM 700 for relocation and repair costs. The total amount of compensation he claimed was therefore KM 6,900.

194. Mr. Samardžić (CH/98/1120) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 15,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 10 months, totalling KM 2,000. In addition, he claimed KM 500 for other unspecified costs. The total amount of compensation he claimed was therefore KM 17,500.

195. Mr. Hadžihafizović (CH/98/1121) did not submit any claim for compensation or other relief.

196. Ms. Rizvić (CH/98/1125) claimed compensation for mental suffering experienced by her due to her inability to return to her home in the sum of KM 2,500. She also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 60 months, totalling KM 9,000. In addition, she claimed KM 500 for other unspecified costs. The total amount of compensation she claimed was therefore KM 12,000.

197. Mr. Ćehajić (CH/98/1128) did not submit any claim for compensation or other relief.

198. Mr. Bahić (CH/98/1129) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 12 months, totalling KM 2,400. In addition, he claimed KM 500 for other unspecified costs.

199. The respondent Party, in its observations on the claims for compensation, which observations were received by the Chamber on 21 June 1999, stated that the applicants left the territory of the Republika Srpska before the entry into force of the Agreement on 14 December 1995. It stated that it is entitled, under Annex 7 to the General Framework Agreement to house refugees and internally displaced persons in abandoned property subject to final determination of ownership of such property by the Annex 7 Commission. The respondent Party pointed out that it had objected to the admissibility of the applications on the same grounds. It claims that neither it nor any body, the actions of which it is responsible for, are responsible for any damage that may have occurred to the applicants. It states that the applicants are responsible for the difficulties they are experiencing as they decided to leave the places where they were accommodated after leaving Gradiška. In conclusion, the respondent Party states that the claims for compensation are ill-founded and inadmissible.

200. Article XIII of Annex 7 (see paragraph 71 above) of the General Framework Agreement allows the Parties, after notification to the Annex 7 Commission and in coordination with, *inter alia*, the United Nations High Commission for Refugees, to house refugees and internally displaced persons in vacant property. It is obvious, however, that this provision could not have been applied prior to the entry into force of the General Framework Agreement and the establishment of the Annex 7 Commission. Accordingly, the Chamber cannot accept the argument of the respondent Party in this regard, which is devoid of any merit.

201. In addition, not all of the applicants left the territory of the Republika Srpska during the war. A number of them remained in their properties until they were illegally evicted (see paragraphs 34, 69 and 73 above). The Chamber likewise does not accept the argument of the respondent Party that the applicants themselves are responsible for the difficulties in which they find themselves by leaving the places in which they were temporarily accommodated and by returning to the Gradiška area. As clearly stated by Article XIII of Annex 7 (see paragraph 71 above), all refugees and displaced persons have the right to return freely to their homes. As the Chamber has found in its decision, the right to return to one's prewar home also raises various issues under the Agreement. It is the responsibility of all of the Parties to the Agreement to ensure that this right is guaranteed to all refugees and displaced persons. A refugee or displaced person who chooses to return to his or her place of origin cannot be held responsible for any difficulties he or she may suffer as a result of the failure of a Party to the Agreement to comply with its obligations, under national law and the General Framework Agreement, to allow him or her to return to his property.

202. Accordingly, the Chamber does not accept the arguments of the respondent Party in relation to the claims for compensation by the applicants.

203. The Chamber notes that 13 of the applicants have claimed sums for mental suffering allegedly caused to them, and in most cases also to members of their families, as a result of their inability to regain possession of their properties. These sums vary from KM 2,500 to KM 17,500 and are based on a figure of KM 2,500 per person in every household allegedly affected. The Chamber considers that such sums are excessive. The Chamber does however, consider it appropriate to award a sum to all of the applicants in recognition of the sense of injustice they have no doubt suffered as a result of their inability to regain possession of their properties, especially in view of the fact that they have all taken various steps to do so. The Chamber does not consider it appropriate to award sums under this head to members of the applicants' families; it can only award such sums to the applicants themselves.

204. Accordingly, the Chamber will order the respondent Party to pay to the applicants in each of the 15 cases the sum of KM 1,200 in recognition of their suffering as a result of their inability to regain possession of their properties. In the particular circumstances at hand the Chamber will also

award the applicants in cases nos. CH/98/780 Mr. Raković, CH/98/1121 Mr. Hadžihafizović and CH/98/1128 Mr. Ćehajić, the same sum, even though they did not claim compensation. As the Chamber held in *Pletilić and others,* (*sup. cit.,* paragraph 236), Article XI(1)(b) of the Agreement does not preclude the Chamber from ordering a remedy which has not been requested by an applicant.

205. In 11 cases, the applicants also claimed compensation for the rent they have been forced to pay for their accommodation pending their return to their properties. These sums range from KM 150 to KM 210 per month for each month that they have been required to pay such rent.

206. In accordance with its decision in *Pletilić and others* (*sup. cit.*, paragraph 238), the Chamber considers that the sum of KM 100 per month is appropriate to award for each month that the applicants were forced to pay for alternative accommodation, payable from two months after the end of the month in which they lodged their first application to the Ministry to regain possession of their properties under the old Law. This sum should continue to be paid at the same rate until the applicants regain possession of their properties. For practical purposes, the Chamber will award the applicants a set sum until the end of November 1999 and a further monthly sum payable from the beginning of December 1999 until the end of the month in which they actually regain possession of their properties. In the cases where the applicants have already regained possession of their properties, compensation is awarded under this head until the end of the month in which they regained possession of their properties.

207. In view of the fact that a number of the applicants who lodged claims for compensation did not request compensation for the costs of alternative accommodation, the Chamber assumes that those applicants did not actually incur such costs. Accordingly it will only award compensation for costs of alternative accommodation to those applicants who specifically requested it.

208. The remaining claims for compensation (relating to relocation costs, repair and other unspecified costs) are unsubstantiated and must be rejected.

209. Additionally, the Chamber awards 4% (four per cent) interest as of the date of expiry of the three-month period set for the implementation of the present decision, on the sums awarded in paragraphs 204 and 206 above.

VIII. CONCLUSIONS

210. For the above reasons, the Chamber decides,

1. by 6 votes to 1, to declare the applications admissible;

2. by 6 votes to 1, that there has been a violation of the rights of the applicants to respect for their homes within the meaning of Article 8 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. by 6 votes to 1, that there has been a violation of the rights of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. by 6 votes to 1, that the impossibility for the applicants to have the merits of their civil actions against the current occupants of their property determined by a tribunal constitutes a violation of their right to effective access to court within the meaning of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. by 6 votes to 1, that the enactment of, and application by the authorities of the Republika Srpska of the Law on the Use of Abandoned Property in the applicants' cases constituted discrimination against them on the ground of national origin in the enjoyment of their rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. by 6 votes to 1, that it is not necessary to rule on the complaints under Article 13 of the Convention;

7. by 6 votes to 1, to order the Republika Srpska to enable the applicants who have not already done so to regain possession of their properties (as described more particularly in respect of each applicant in Section III of this decision) without further delay;

8. by 6 votes to 1, to order the Republika Srpska:

(a) to pay to the applicants within three months of the date of the present decision becoming final in accordance with Rule 66 of the Chamber's Rules of Procedure, the following sums:

to Ms. Mirsada Bašić, the applicant in case no. CH/98/752: KM 2,000 (two thousand Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 800 for rental payments she incurred in respect of paying for alternative accommodation;

to Mr. Sakid Galić, the applicant in case no. CH/98/827: KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;

to Mr. Hikmet and Ms. Muharema Begović, the applicants in case no. CH/98/828: KM 4,200 (four thousand two hundred Convertible Marks), composed of KM 2,400 by way of compensation for mental suffering and KM 1,800 for rental payments they incurred in respect of paying for alternative accommodation;

to Mr. Ismet Misimović, the applicant in case no. CH/98/847: KM 3,000 (three thousand Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,800 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Agan Ahmetagić, the applicant in case no. CH/98/848: KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;

to Ms. Hajrija Ganić, the applicant in case no. CH/98/1102: KM 2,800 (two thousand eight hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,600 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Emir Kolarić, the applicant in case no. CH/98/1104: KM 2,300 (two thousand three hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,100 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Mujo Zukanović, the applicant in case no. CH/98/1114: KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;

to Mr. Mujaga Hadžić, the applicant in case no. CH/98/1117: KM 2,700 (two thousand seven hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Atif Golubić, the applicant in case no. CH/98/1119: KM 2,700 (two thousand seven hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Haso Samardžić, the applicant in case no. CH/98/1120: KM 2,800 (two thousand eight hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,600 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Nedžad Hadžihafizović, the applicant in case no. CH/98/1121: KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;

to Ms. Šuhra Rizvić, the applicant in case no. CH/98/1125: KM 3,400 (three thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 2,200 for rental payments she incurred in respect of paying for alternative accommodation;

to Mr. Muharem Ćehajić, the applicant in case no. CH/98/1128: KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;

to Mr. Mehmed Bahić, the applicant in case no. CH/98/1129: KM 2,700 (two thousand seven hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments he incurred in respect of paying for alternative accommodation;

(b) to pay to those applicants who have not yet regained possession of their properties by 30 November 1999, within three months from the dates when they regain possession of their properties, the sum of KM 100 (one hundred Convertible Marks) per month from 1 December 1999 until the end of the month in which they regain possession of the properties;

(c) to pay to the applicant or applicants in each case simple interest at the rate of 4 (four) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above three-month periods until the date of settlement of all sums due to the applicant or applicants in each case in accordance with this decision; and

9. by 6 votes to 1, to order the Republika Srpska to report to it within three months of the date of the present decision becoming final 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)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS

DELIVERED ON 14 MAY 1999

Case No. CH/98/756
Đ. M.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 13 April 1999 with the following members present:

Ms. Michele PICARD, President
Mr. Giovanni GRASSO Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Manfred NOWAK
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Leif BERG, 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 ("the General Framework Agreement");

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement as well as Rules 52, 57 and 58 of its Rules of Procedure;

I. INTRODUCTION

1. In 1997 the applicant, a citizen of Bosnia and Herzegovina of Bosniak origin, initiated proceedings before the Municipal Court and municipal authorities in Livno, Canton 10, seeking to regain possession of her house. She claims she was forced out of it by persons of Croat origin in 1993, and thereafter lived abroad before returning in January 1998. The applicant complains that due to her ethnic origin she has been denied her right to a fair hearing before an independent and impartial tribunal, her right to equality before the law, her right to respect for her home, her right to an effective remedy and her right to the peaceful enjoyment of property.

2. The case primarily raises issues of discrimination in relation to Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and Article 1 of Protocol No. 1 to the Convention as well as under Article 26 of the International Covenant on Civil and Political Rights ("the Covenant"). The application also raises issues in relation to the aforementioned Convention provisions in isolation.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced and registered on 10 July 1998. It contained a request for a provisional measure to be ordered pursuant to Article X(1) of the Agreement. The request did not specify the measure sought.

4. On 17 July 1998 the Chamber refused the request for a provisional measure but decided to transmit the application to the respondent Party for its observations on the admissibility and merits pursuant to Rule 49(3)(b) of the Rules of Procedure. A time-limit expiring on 11 September 1998 was set for the receipt of such observations. No observations were received. On 29 September 1998 the respondent Party requested an "extension" of the time limit for submitting its observations.

5. On 14 October 1998 the Chamber refused the respondent Party's request for a new time limit and decided to proceed without any observations from it. On 21 October 1998 the Chamber invited the applicant to submit her final written observations and any claim for compensation before 23 November 1998. She was warned that a claim for compensation or other relief would only be considered if a claim to this effect had been made in her written observations, unless the Chamber, for special reasons, decided to admit a claim at a later stage. In a letter dated 18 November 1998 the applicant stated that she did not wish to submit a claim for compensation at that time.

6. On 13 November 1998 the Chamber decided to hold a public hearing on the admissibility and merits of the case during its December session 1998. The Chamber invited the Institution of Ombudsmen of the Federation of Bosnia and Herzegovina to take part in the proceedings as *amicus curiae.* The Chamber further decided to summon as witnesses Mr. Midhad Osmančaušević, Assistant Federation Ombudsman in Livno, and Mr. Milan Kolak, judge of the Municipal Court in Tomislavgrad. The hearing was later fixed for 17 December 1998. The applicant was invited to state, at the hearing, any claim for compensation of expenses relating to her attendance at that hearing. The applicant did not request the reimbursement of such expenses at the hearing but did so in her claim for compensation of 5 February 1999 (see paragraphs 15 and 99 below).

7. On 9 December 1998 Mr. Kolak informed the Deputy Registrar that he would be unable to attend the Chamber's hearing due to his "busy schedule". On 10 December 1998 the Registrar reminded Mr. Kolak of his duty to comply with the summons issued under Article X(1) of the Agreement and Rule 39 of the Rules of Procedure. On 11 December 1998 the Registrar informed the respondent Party of Mr. Kolak's intention not to appear as witness, and reiterated the respondent Party's undertaking under Article X (5) of the Agreement "to co-operate fully" with the Chamber. To this end, the respondent Party was requested to take all necessary steps so as to ensure Mr. Kolak's attendance at the hearing, and to report to the Chamber on those steps.

8. By a letter of 10 December 1998 received by the Chamber on 14 December 1998 Mr. Kolak confirmed his intention not to appear before the Chamber, referring, *inter alia,* to transportation problems. Though denying that he himself had ever been biased in a case, Mr. Kolak admitted that "certain difficulties (did) exist with regard to the passing of judgements (involving a party of Bosniak

origin) and particularly as regards the enforcement (of such judgements)".

9. On 10 December 1998 the Centre for the Affirmation of Human Rights and Freedoms proposed that Mr. Aziz Jahijefendić, lawyer of the Centre, be heard as witness.

10. On 14 December 1998 the Chamber decided to summon Mr. Jahijefendić to appear as witness. The Chamber also deliberated in respect of Mr. Kolak's clear intention not to appear before it. On 15 December 1998 he was again reminded of his duty to comply with the summons issued under Article X(1) of the Agreement. On 15 December 1998 the President reiterated the Chamber's demand that the respondent Party take all necessary steps (if necessary coercive) to ensure Mr. Kolak's attendance at the public hearing.

11. On 15 December 1998 the respondent Party submitted written observations on the admissibility and merits of the case.

12. At the Chamber's hearing on 17 December 1998 in the Cantonal Court in Sarajevo there appeared the applicant in person; Ms. Seada Palavrić, Agent of the respondent Party; Mr. Sead Bahtijarević, Assistant Federation Ombudsman acting on behalf of *amicus curiae*; as well as Mr. Midhad Osmančaušević and Mr. Aziz Jahijefendić in their capacity as witnesses. Certain written documentation was also handed in during the hearing. The applicant claimed compensation for pain and suffering.

13. On 19 December 1998 the Chamber deliberated on the admissibility and merits of the case. It further decided to invite the parties to submit before 8 January 1999 their possible further observations pursuant to Rule 50 on the written documentation received during and after the hearing. No such observations were received.

14. On 27 January 1999 the Chamber forwarded copies to the respondent Party of Mr. Kolak's correspondence with the Chamber, for possible observations by 8 February 1999. No such observations were received.

15. On 5 February 1999 the applicant submitted a claim for compensation for pecuniary damages (see paragraphs 6 and 99). On 4 March 1999 the respondent Party submitted its observations on this claim.

16. The Chamber further deliberated on the admissibility and merits of the case on 12 and 13 February, on 12 March as well as on 12 and 13 April 1999. The Chamber adopted its decision on the last-mentioned date.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

17. The facts of the case are not in dispute between the parties. The applicant, of Bosniak origin, owns a house with a surrounding plot in Kablići, Livno (Canton 10) in the Federation of Bosnia and Herzegovina. The applicant's house was broken into and occupied on 10 September 1993 by B.J., a police officer of Croat origin posted in Bugojno, and his relatives. The applicant and her family left the country shortly thereafter and lived in Croatia, Hungary and Switzerland before they were obliged to return to Livno in January 1998. Since that time she and her husband have had to live separately with relatives, caring for one child each.

18. On 24 September 1997 the applicant applied to the Department of Urbanism, Building and Housing Affairs of the Municipality of Livno for the return of her house pursuant to Article 25 of the Law on Temporarily Abandoned Real Property Owned By Citizens. She did not receive any response.

19. On 15 October 1997 the applicant initiated civil proceedings before the Municipal Court in Livno against B.J., seeking to regain physical possession of her house and the eviction of the temporary occupants. The applicant's action was registered on the same day. There have been no subsequent developments in these proceedings to date.

20. On 18 May 1998 the applicant petitioned the Department of Geodetic and Legal Affairs of the Municipality of Livno, reclaiming her property "as soon as possible" on the basis of Article 12 of the 1998 Law on the Cessation of the Law on Temporarily Abandoned Real Property Owned By Citizens ("the 1998 Law"). There has been no response.

21. On 18 May 1998 the applicant also submitted an application to the Commission for Real Property Claims of Displaced Persons and Refugees (established by Annex 7 to the General Framework Agreement; henceforth "the Annex 7 Commission").

22. On 2 November 1998 the applicant complained about "the silence of the administration" to the Cantonal Ministry of Justice and Administration. There has been no response.

B. Particular written evidence

23. In a letter of 28 October 1997 addressed to, among others, all courts and mayors in Canton 10, Mr. Mirko Baković, then Governor of the Canton, forwarded certain conclusions from a meeting held on 6 July 1997 with Dr. Christian Schwarz-Schilling, International Mediator for the Federation of Bosnia and Herzegovina and Republika Srpska, and Mr. Goran Magaš, adviser of the President of the Federation of Bosnia and Herzegovina. The letter read as follows:

> "To: Ministry of Interior of Herzeg-Bosnia Canton
> Ministry of Labor and Welfare,
> Courts in the area of Canton Herzeg-Bosnia Canton
> Mayors in the area of Herzeg-Bosnia Canton
>
> Subject: Conclusions relating to the accommodation of displaced persons.
>
> Concerning the very frequent phenomenon of evicting displaced persons from houses where they found accommodation we wish to inform you that on 6 July 1997 we held a meeting with the International Mediator for the Federation of BiH, Mr. Christian Schwarz-Schilling, attended also by Mr. Goran Magaš, adviser to the President of the Federation of BiH, which resulted in the following conclusions:
>
> - displaced persons must not be thrown out of the houses they are occupying, no matter whom they belong to (Serbs, Croats, Muslims);
>
> - displaced persons are to remain in the buildings they occupy until their status has been resolved either by enabling them to return to their own homes or by finding them other accommodation, which will be taken care of by municipal authorities in the municipalities where they reside now;
>
> - the ownership over the mentioned buildings is recognised;
>
> - we also point out here that the corresponding services have been advised of this orally; we are under the impression that those instructions have not been complied with because it has come to our attention that pressure is being applied on displaced persons to move out of the houses where they are accommodated;
>
> - should, ..., displaced persons in the area of our Canton ask for help and assistance from cantonal authorities, you are under an obligation to comply with this agreement.
>
> - Please advise the competent services of this matter for the purpose of protecting the displaced persons in the area of our Canton ..."

24. In a letter of 20 March 1998 to Governor Baković, Dr. Schwarz-Schilling, referring to the purported agreement between the two, stressed that under Annex 7 to the General Framework Agreement refugees and displaced persons were entitled to return to their pre-war places of

residence. The implementation of Annex 7 therefore necessitated "lawful evictions of the current occupants of dwellings belonging to such returnees". Dr. Schwarz- Schilling requested Mr. Baković to ensure that the cantonal and municipal authorities would understand his position clearly, and correctly inform the public thereof.

25. The Centre for the Affirmation of Human Rights and Freedoms in Livno has drawn up a list of 56 cases, including that of the applicant, in which the Centre, between 3 February 1997 and 2 April 1998, assisted plaintiffs in bringing repossession claims before the municipal courts of Livno and Tomislavgrad. According to the Centre, 50 of the claims concerned real property owned by the plaintiffs, most of whom had returned from abroad without any accommodation awaiting them. Almost 90 per cent of the properties concerned had been occupied illegally. In none of the cases has any hearing, even of a preparatory character, been scheduled.

26. A report submitted by the Federation Ombudsmen's office in Livno on 13 July 1998 noted that 365 cases involving labour and property rights and brought by members of the (Bosniak) minority were pending before the municipal courts of Livno and Tomislavgrad. In a considerable number of the cases no preparatory hearing had yet been held. The Ombudsmen further alluded to their reports of 16 March and 19 May 1998 in which they had quoted judge Kolak of the Municipal Court of Tomislavgrad as having stated essentially that the cases in question would start to be resolved once there had been a political resolution to the problem of displaced persons.

C. Oral testimony

1. Mr. Aziz Jahijefendić

27. Mr. Aziz Jahijefendić is a lawyer of the Centre for the Affirmation of Human Rights and Freedoms based in Livno. This organ is sponsored by the United Nations High Commissioner for Refugees and provides legal aid principally in matters relating to claims for repossession of private and socially-owned property.

28. The Centre assisted the applicant in lodging her action of 15 October 1997 with the Municipal Court in Livno, where her case was registered on the same day. Nothing has happened in the case since that date. The Centre further assisted the applicant in lodging the various requests with the municipal organs which have taken no action. Most recently, in November 1998 the Centre assisted the applicant in complaining to the Cantonal Ministry of Justice and Administration about the silence of the administration. No action has been taken. In other cases the Ministry declared itself incompetent to deal with such complaints, referring to the fact that there exists no appellate organ to which appeals could be addressed against administrative acts of the municipal departments for property matters.

29. The witness was unaware of any decision declaring the applicant's house abandoned and/or allocating it to the present occupants. He concluded that no such decision can exist and that the house is therefore occupied illegally. In roughly 80 per cent of the cases in which the Centre has intervened, displaced persons from Bugojno moved into houses without the approval of the competent municipal organ. Out of those who have invoked the 1998 Law, the Centre has not registered a single case where the refugee had been reinstated into his private house or into a socially-owned apartment. Although under the 1998 Law there is a right of appeal to a cantonal organ for property matters no such appellate body has been established in Canton 10.

30. According to the witness, no action has been taken by the Livno Municipal Court in any of the 56 cases in which the Centre has assisted plaintiffs in claiming repossession of their property. By way of comparison, the witness referred to the Centre's assistance to a person of Croat origin, whose claim for repossession had been processed immediately by the Municipal Court. The witness concluded that in proceedings of this nature Bosniak and Serb claimants are not placed on an equal footing with those of Croat origin.

31. The witness further stated that there are only two officials of Bosniak origin in the administrative and judicial bodies in Livno. These were the only persons of that origin to be re-employed after the war. All heads of departments are of Croat origin.

2. Mr. Midhad Osmančaušević

32. Mr. Midhad Osmančaušević is Assistant Ombudsman of the Federation, based in Livno. The Ombudsmen's office in Livno is competent for the whole of Canton 10, that is to say for the municipalities Livno, Kupres, Tomislavgrad, Drvar, Bosansko Grahovo and Glamoc. The witness was a judge of the Livno Municipal Court until 1993 when he was dismissed "for his personal security" and "for having participated in an armed riot". In the Livno Municipal Court there are currently, in addition to the Croat judges, two Serb judges, one of them being married to a Croat.

33. The witness stated that the legal conditions for the appointment of judges in Canton 10 are being respected. Nevertheless, the judiciary is not independent. Out of the 1,160 cases pending before the Federation Ombudsmen in Livno a majority concerns claims for repossession of property which, particularly in Livno and Tomislavgrad, remains occupied by citizens of Croat origin from Bugojno. The judges in these two towns schedule hearings rarely if ever, if the plaintiff in disputes relating to property or employment is of Bosniak or Serb origin. Judge Kolak of the Tomislavgrad Court is the judge on approximately 100 cases brought by Bosniaks against companies or municipal institutions. He has not scheduled a single hearing in any of those cases. In response to a query by the witness as to the reasons therefor, judge Kolak had answered that those were "political issues which were going to be resolved by politics and not by the courts". The witness had noticed a certain fear in judge Kolak, who then stated openly that he would fear for his own safety if he were to schedule hearings in such cases.

34. The witness further stated that prior to the entry into force of the 1998 Law, about 100 cases had been brought before the Livno Municipal Court by returning Bosniaks against temporary occupants from the Bugojno area. Hearings were scheduled very rarely and the proceedings never came to a close. The Ombudsmen assisted in three cases where the proceedings were concluded in the plaintiff's favour but judge Mirko Bralo declined to examine the requests for enforcement, referring the matter to "the competent municipal organ". Judge Bralo had stated to the witness that he did not dare to schedule hearings since he had received "orders from the top" to the effect that he should not "flunk".

35. The witness further referred to the letter of the then Governor of Canton 10, referring to an agreement between him and the international mediator Dr. Schwarz-Schilling to the effect that temporary users of property could not be evicted as long as the necessary conditions had not been created (see paragraphs 23–24 above). The Governor's letter had been shown to the witness by the judge on the applicant's case, Ms. Ozrenka Vidaček. Unlike her colleague, judge Kolak, she has never spoken openly about the problems with the independence of the judiciary. Nonetheless, her approach to the cases referred to in the letter has been the same as his. In reply to a question from the witness, Dr. Schwarz-Schilling later publicly denied having reached any such agreement. In the opinion of the witness, the Governor's letter amounts to an instruction to judges and other officials prohibiting them from taking any action in order to evict temporary occupants.

36. By way of further exemplifying the differential treatment of plaintiffs in Canton 10, the witness referred to an action for repossession of real property which had been brought before the Livno Municipal Court in April 1994. The first hearing was held in June 1998. A judgement in the plaintiff's favour became enforceable in November 1998 but judge Bralo had told the plaintiff the judgement "could not be executed". However, in July 1997 companies holding a right to allocate occupancy rights in socially-owned apartments had succeeded to have the contracts of Bosniak and Serb occupancy rights holders quickly terminated by the same tribunal.

37. The witness finally stated that so far no appeal body has been established in matters relating to claims for repossession of property. Even the post as Head of the Department for Property Law Matters/Housing Issues (the first instance) has been vacant for months. As a result, no decisions can be signed and delivered. All administrators are of Croat origin.

C. Relevant domestic law

1. The Law on Temporarily Abandoned Real Property Owned by Citizens

38. The Law on Temporarily Abandoned Real Property Owned By Citizens (*Službeni List (*Official Gazette) of the former Republic of Bosnia and Herzegovina ("RBiH"), Nos. 11/93 and 13/94) was in force up to 4 April 1998, when it was replaced by the Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned By Citizens (*Službeni Novine* (Official Gazette) of the Federation of Bosnia and Herzegovina ("FBiH"), No. 11/98; "the 1998 Law; see paragraphs 41-42).

39. According to the Law on Temporarily Abandoned Real Property Owned by Citizens, real property was to be considered abandoned within the meaning of this Law, if it had been abandoned or had temporarily ceased to be used by its owners, or members of the owner's household, after 30 April 1991. Real property used by third persons on the basis of a valid contract concluded with the owner was not to be considered abandoned (Article 5). The municipal administrative organ for housing affairs was competent *ex officio* to declare property abandoned and to place it under the administration of the municipality for the purpose of allocating it for temporary use (Articles 7 and 12).

40. On his or her return to the municipality, the owner could reclaim the property at any time. The competent organ was to respond within three days from the day of receipt of the owner's request, by issuing a decision terminating the municipal administration over the property and returning it to the owner. If the property had been allocated for temporary use, the temporary user was to be ordered to vacate it and return it to the owner within eight days from the day of delivery of the decision to this end (Articles 25 and 26).

2. The Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens

41. Under the Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens ("the 1998 Law") the legislation and regulations governing temporarily abandoned property owned by citizens in the period between 30 April 1991 and the entry into force of the 1998 Law shall cease to be applied (Article 1).

42. The owner of real property declared abandoned shall have the right to reclaim it at any time. For the purpose of this Law, the owner shall be understood to mean the person who, according to the legislation in force, was the owner of the real property at the moment when it was declared abandoned (Articles 4-5 and 10). A claim for repossession shall include, *inter alia*, the date when the owner intends to return to the property (Article 11(3)(3)). The temporary user of the property shall continue to use it on the conditions and in a manner prescribed by the Law on Temporarily Abandoned Real Property Owned By Citizens, until the issuance of a decision under Article 12 (Article 6). This decision shall be issued within 30 days from receipt of the claim and shall stipulate*, inter alia*, a time limit within which the property shall be vacated by the temporary occupant. An appeal lies to the cantonal administrative body competent in property law matters within 15 days. A party affected by the decision may at any time file a claim with the Annex 7 Commission (Articles 13-14).

3. The Constitution of the Federation of Bosnia and Herzegovina

43. According to Article 1 of Chapter IV(C)(1) of the Constitution of the Federation of Bosnia and Herzegovina, the judicial functions in the Federation shall be exercised, *inter alia*, by the Supreme Court of the Federation, by the cantonal courts as prescribed in Chapter V(11) and by the municipal courts as prescribed in Chapter VI(7). Under Chapter V(6) the cantonal legislatures shall, *inter alia,* elect the judges of the cantonal courts.

44. Chapter V(11) of the Constitution reads as follows:

> "1) Each canton shall have courts, which shall have appellate jurisdiction over the courts of its municipalities and original jurisdiction over matters not within the competence of those courts and as provided by law.
>
> 2) Cantonal judges shall be nominated by the Cantonal President from among outstanding

jurists and be elected by a majority vote in the Cantonal Assembly, in such a way as to ensure that the composition of the judiciary as a whole shall reflect that of the population of that Canton.

3) Cantonal Judges shall serve until the age of 70, unless they resign or are removed from office by consensus among the judges of the Supreme Court. The conditions of service shall be determined by cantonal legislation. ...

4) Each cantonal court shall elect its own President."

45. Chapter VI(7) provides as follows:

"1) Each municipality shall have courts, which may be established in co-operation with other municipalities, and which shall have original jurisdiction over all civil and criminal matters, except to the extent original jurisdiction is assigned to another court by this or the Cantonal Constitution or by any Law of the Federation or the Canton.

2) Municipal courts shall be established and funded by the Cantonal Government.

3) Judges of municipal courts shall be appointed by the President of the ... Cantonal Court after consultation with the Mayor of the municipality.

4) Judges of municipal courts shall serve until age 70, unless they resign or are removed from office by consensus among the judges of the ... Cantonal Court. The conditions of service shall be determined by cantonal legislation. ..."

4. The Constitution of Canton 10

46. Chapter IV(c) of the Constitution of Canton 10 (Official Gazette of Canton 10, No. 1/96) states, as far as relevant, as follows:

Article 45:

"The judicial authorities in the Canton are independent and shall execute their power based on the Constitution and the laws of the Federation and Canton."

Article 46:

"The courts in the Canton shall ensure an equal position to all parties to judicial proceedings."

Article 48:

"The cantonal courts shall be established in accordance with the law of the Canton."

Article 51:

"The judges of the Cantonal Court shall be proposed by the Governor of the Canton from among prominent lawyers, and shall be elected by (the Cantonal) Assembly, whereby the national composition of the judiciary as a whole shall reflect the national structure of the population of the Canton."

Article 52:

"The judges of the cantonal and municipal courts shall serve until the age of 70, unless they resign or are removed from office as follows:

a) the judges of the Cantonal Court by consensus among the judges of the Supreme Court of the Federation; and

b) the judges of a municipal court by consensus among the judges of the Cantonal Court.

The terms of service shall be determined in a separate law of the Canton. ..."

Article 53:

"The Cantonal Court shall elect its President in accordance with the law."

Article 54:

"All the judges of the cantonal and the municipal courts shall be prominent lawyers of the highest moral qualities. The judges of the cantonal and the municipal courts shall not be criminally prosecuted or (held) responsible in civil proceedings for any action undertaken in performing their functions."

Article 73:

"The judges of the municipal courts shall be appointed by the President of the Cantonal Court upon consultations with the Mayor of the municipality."

5. The Law on the Judiciary of Canton 10

47. The Law on the Judiciary (Official Gazette of Canton 10, No. 1/97) governs, *inter alia,* the competence of the courts of the canton and the appointment of their judges (Article 1).

Article 4:

"The courts of the Canton shall perform its judicial function under the Constitution of the Federation of Bosnia and Herzegovina (hereinafter "the Federation") and the Constitution and laws of the Canton."

Article 11:

"The judges and lay judges ... are appointed and removed from office by the competent authorized body established by this Law."

Article 44:

"A citizen of the Federation who resides on the territory of the Federation, is a lawyer ... with a barrister's exam and a jurist of recognized competence, can be appointed judge. Judges are appointed for an unlimited period of time and may remain in service until they reach the age of 70. The national composition of the judges as a whole shall reflect the national structure of the population of the Canton."

Article 46:

"Judges of the municipal courts are appointed by the President of the Cantonal Court upon consultations with the Mayor of the municipality."

Article 47:

"Judges of the Cantonal Court are appointed by a majority of votes of the Cantonal Assembly, on the proposal by the Governor of the Canton."

Article 48:

"The appointment of judges shall be performed on the basis of a public announcement published in media available to all citizens of the Canton. This public announcement is published by the Ministry of Justice ..."

Article 49(4):

"(4) The applications received ... shall be analyzed by the Ministry which shall make a list of candidates in alphabetic order and, with its opinion on the competence of the candidates, transmit it to the Governor and the President of the Cantonal Court for further procedure."

Article 51:

"Before taking up their duty judges shall make the solemn declaration. It reads as follows:
'As the judge I solemnly declare that I will adhere to the Constitution and the law of the Federation and the Constitution and the law of the Canton, and that I will perform my duty conscientiously and impartially.'"

Article 54:

"The duty of the judge shall be terminated by his/her removal from office or by his/her resignation."

Article 55:

"The procedure for the removal from office of a judge is set in motion:
- if he/she is convicted of a criminal act which makes him/her unworthy of exercising the duty of a judge;
- if it is established that he/she seriously abused her position as a judge or damaged the reputation of the judicial office;
- if it is established that he/she is not qualified for the post as judge, if he/she does not achieve satisfactory results in his/her duty for a longer period of time or if he/she performs his/her duty as a judge in a disorderly manner for a longer period of time; (or)
- if it is established that he/she is permanently disabled to act in the position of a judge on the basis of an opinion of the competent medical service."

Article 56:

"A proposal to remove a Cantonal Court judge from office shall be made by the Governor on the initiative of the President of the Supreme Court of the Federation, the President of the Cantonal Court or the Minister of Justice and Administration (of the Canton). A proposal to remove a municipal court judge from office is made by the President of the Cantonal Court or the President of the Municipal Court."

Article 62:

"Lay judges on the Cantonal Court are appointed by the Cantonal Assembly on the proposal of the Governor. Lay judges on the Municipal Court are appointed by the President of the Cantonal Court on the proposal of the Mayor."

IV. COMPLAINTS

48. The applicant complains that due to her Bosniak origin she has been denied her right to a fair hearing within a reasonable time before an independent and impartial tribunal, her right to respect for her home, her right to an effective remedy and her right to the peaceful enjoyment of property (Articles 6, 8 and 13 of the Convention as well as Article 1 of Protocol No. 1 to the Convention).

V. FINAL SUBMISSIONS OF THE PARTIES

A. The respondent Party

49. The respondent Party argues, with reference to Article VIII(2)(d) of the Agreement, that the application should be rejected as being inadmissible or at least that the consideration thereof should be deferred, since the applicant has also petitioned the Annex 7 Commission, where the matter remains pending.

50. In the alternative, the Federation submits, with reference to Article VIII(2)(a) of the Agreement, that the applicant's claim under the 1998 Law was incomplete and therefore she failed to exhaust effective domestic remedies. More particularly, the applicant's repossession claim under the 1998 Law did not specify the date when she wished to move back into her house, although such mention is required by Article 11(3)(3) of that law. The applicant's statement that she wished to be reinstated immediately was inadequate, thereby resulting in a delay in the issuing of the decision in response to her claim. It is the respondent Party's contention that the 1998 Law is applicable in the applicant's case regardless of whether or not her property was formally declared abandoned and even though the applicant initiated proceedings prior to the entry into force of that law. Moreover, the 1998 Law does not afford to the Municipal Court any competence to deal with the applicant's case. It follows from Article 14 of the 1998 Law that an appeal against acts of any municipal or cantonal organ may be lodged with the Annex 7 Commission.

51. Should the Chamber find that the admissibility requirements have been met, the respondent Party concedes that problems with the independence and efficiency of the courts in Canton 10 do exist. However, the courts of the cantons are independent of the Federation except for the fact the Supreme Court of the Federation may remove judges from their office in cantonal courts. The Federation is working on resolving the problems in the judiciary in Canton 10. However, judges cannot be deprived of their freedom of association or of their right to sympathise with a political party. Moreover, the aforementioned problems have not had any impact on the applicant's case and the fact that she has still not regained her property.

B. The applicant

52. As for the admissibility requirements, the applicant maintains that her house was forcibly and unlawfully occupied by B.J. She was never notified of any decision declaring her property abandoned and allocating it for temporary use to the current occupants but was nevertheless advised to reclaim her possession also under the 1998 Law. With respect to the merits of the case, the applicant maintains her complaints.

C. *Amicus curiae*

53. As for the admissibility of the case, *amicus curiae* submits that under the Law on Civil Proceedings the Municipal Court is competent to deal with the applicant's action of 15 October 1997 for reclaiming physical possession of her property by having the illegal occupants evicted. The 1998 Law is therefore inapplicable in her case, as there is no evidence that the applicant's property was ever declared abandoned. Even if the 1998 Law were to apply, the municipal administration was under a duty to invite the applicant to correct any inaccuracies in her repossession claim of 18 May 1998.

54. As for the merits of the case, a*micus* submits that the applicant's rights under the Agreement have been violated due to the respondent Party's failure to meet its obligation to secure those rights. *Amicus* was last in contact with the Municipal Court on 4 December 1998, by which date there had been no developments in the applicant's case, even with a view to having her rectify or complete her action of 15 October 1997. Her case is an example of a well-orchestrated policy not to process repossession claims lodged by Bosniaks.

55. *Amicus* further points out that five of the six judges on the Livno Municipal Court are of Croat origin, the remaining being a Serb. Under the domestic law the judges of the municipal courts are appointed by the President of the Cantonal Court after consultations with the Mayor of the

municipality. Proposals for appointment are being made exclusively by the ruling political party and all appointments are made according to these criteria. Accordingly, all judges are at least sympathisers of that party, which creates an objective appearance that the courts are not impartial and that there cannot be fair proceedings. The same is true for the officials of the municipal body seized of repossession claims. In Canton 10 this has resulted in obvious discrimination by the majority of the population (of Croat origin) against the Bosniak and Serb minorities.

VI. OPINION OF THE CHAMBER

A. Admissibility

1. Competence *ratione temporis*

56. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss an application which it considers incompatible with the Agreement. The Chamber recalls that in accordance with generally accepted principles of international law, the Agreement cannot be applied retroactively (see, e.g., *Matanović v. The Republika Srpska*, Case No. CH/96/1, decision of 13 September 1996, Decisions 1996-1997).

57. The Chamber notes that the applicant's complaints concern actions and omissions of the authorities of the respondent Party from October 1997 onwards which therefore fall within the Chamber's competence *ratione temporis*. The application is thus compatible with the Agreement for the purposes of Article VIII(2)(c).

2. *Lis alibi pendens*

58. According to Article VIII(2)(b) of the Agreement, the Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement. Moreover, under Article VIII(2)(d) of the Agreement the Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.

59. The Chamber notes that the applicant has also claimed the return of her real property by petitioning the Annex 7 Commission. According to Article XI of Annex 7, the mandate of that Commission is confined to decisions on claims for real property in Bosnia and Herzegovina, where the property has not been sold voluntarily or otherwise transferred since 1 April 1992 and where the claimant does not now enjoy possession of that property. The Chamber notes that in the present case the applicant has raised several complaints substantially different from the subject matter which she has brought before the Annex 7 Commission. In addition to the complaint relating to her property rights, the case before the Chamber raises issues of potential discrimination with respect to the applicant's enjoyment of various rights guaranteed to her under the (Human Rights) Agreement (Annex 6). These matters all fall outside the Annex 7 Commission's competence.

60. The Chamber finds therefore that the applicant's pending claim before the Annex 7 Commission does not preclude the Chamber from examining the whole of her present case before the Chamber. Moreover, even if one of the subject-matters now before the Chamber remains pending before the Annex 7 Commission, the Chamber does not find it appropriate to defer further consideration of the present application. It follows that the admissibility requirements spelled out in Article VIII(2)(b) and (d) of the Agreement have also been met.

3. Requirement to exhaust effective domestic remedies

61. The Chamber must next consider whether, for the purposes of Article VIII(2)(a) of the Agreement, any "effective remedy" was available to the applicant in respect of her complaints and, in the affirmative, whether she has demonstrated that they have been exhausted. Normal recourse

should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Moreover, in applying the rule on exhaustion of domestic remedies it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants. In the absence of any indication of such a remedy the onus is on the respondent Party to show that there was a remedy available to the applicant other than his application based on the Agreement. It is incumbent on a respondent Party claiming non-exhaustion to satisfy the Chamber that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, e.g., *Čegar v. The Federation of Bosnia and Herzegovina*, Case No. CH/96/21, decision on admissibility of 11 April 1997, Decisions 1996-1997, paragraphs 11, 14; *Blentić v. The Republika Srpska,* Case No. CH/96/17, decision of 3 December 1997, Decisions 1996-97, paragraphs 19-21, both with reference to case-law of the European Court).

62. In the present case the respondent Party has argued that the applicant failed to make proper use of the remedy available to her under the 1998 Law, as her repossession claim should have stated a precise date when she wished to return to her house. The applicant has maintained that she did not receive notice of any decision declaring her house abandoned and allocating it to the current occupants. On the contrary, she insists that her property was taken from her under threat and occupied illegally.

63. The Chamber will first examine the applicability of the 1998 Law in the instant case. According to Article 4, only the owner of real property which has been declared abandoned shall have the right to file a claim for the return of such property. The Chamber finds that the Federation has not provided any evidence to show that the applicant's property has ever been declared abandoned by the competent authorities, let alone allocated for temporary use to B.J. In these circumstances the Chamber cannot find it established that an effective remedy was or would even in theory be available to the applicant under the 1998 Law.

64. The Chamber finds, on the contrary, that the applicant must be presumed to have had "normal recourse" to the remedies available to her, that is to say, by seizing the Municipal Court and various authorities. The respondent Party has not even argued that these remedies would be "effective" within the meaning of the Agreement. Noting the lack of any progress in the processing of any of the applicant's petitions, the Chamber concludes that the admissibility requirement in Article VIII(2)(a) of the Agreement has also been met.

B. Merits

65. Under Article XI of the Agreement the Chamber must in the present decision address the question whether the facts found 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 recognized human rights and fundamental freedoms", including the rights and freedoms provided for in the treaties listed in the Appendix to the the Agreement.

66. Under Article II of the Agreement, the Chamber has competence 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 16 international agreements listed in the Appendix (including the Convention), where such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities or any individual acting under the authority of such an official or organ.

67. The Chamber has considered the present case under Article II(2)(b) of the Agreement in relation to Articles 6(1), 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and

Article 26 of the Covenant. The Chamber has further considered the case under Article II(2)(a) of the Agreement in relation to the said provisions of the Convention.

68. The Chamber has held in *Hermas v. The Federation of Bosnia and Herzegovina* (Case No. CH/97/45, decision on admissibility and merits of 16 January 1998, Decisions and Reports 1998, p. 196-197, paragraph 82) that the prohibition of discrimination is a central objective of the Agreement to which the Chamber must attach particular importance. It will therefore first consider whether the applicant was discriminated against.

1. Discrimination in the enjoyment of the applicant's right to a fair hearing within a reasonable time before an independent and impartial tribunal, to equal protection of the law, to respect for her home and to the peaceful enjoyment of her property

69. Article 6(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. …"

Article 26 of the Covenant reads as follows:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth, or other status."

Article 8 of the Convention provides, as far as relevant, as follows:

"1. Everyone has the right to respect for his … family life, his home …

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society …. for the protection of the rights and freedoms of others."

Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in this 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."

Article 1 of Protocol No. 1 to the Convention reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

70. The Chamber recalls that the right to one's property and "home" is a "civil right" within the meaning of Article 6(1) of the Convention (cf., e.g., *Kevešević v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/46, decision of 10 September 1998, Decisions and Reports 1998, p. 217, paragraph 63). The dispute before the Livno Municipal Court regarding the applicant's right to her property therefore comes within the ambit of that provision. The applicant's grievances also fall within the ambit of Articles 8 and 13 of the Convention as well as of Article 1 of Protocol No. 1.

71. The Chamber observes that Article 26 of the Covenant sets out an independent right to equality before the law and equal protection of the law (cf. *Marčeta v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/41, decision of 6 April 1998, Decisions and Reports 1998, p. 165 et seq., paragraphs 61 et seq.). In the present case the Chamber notes that the applicant has seized the Municipal Court of the matter and, in addition, petitioned various administrative authorities of the municipality and the canton, before which she may assert her right to equal and effective protection of the law, as guaranteed under Article 26 of the Covenant. In these circumstances, the Chamber will also consider whether the applicant has been discriminated against in the enjoyment of her right to equal protection of the law.

72. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls the jurisprudence of the European Court of Human Rights with respect to Article 14 of the Convention, of the UN Human Rights Committee with respect to Articles 2 and 26 of the Covenant, and the jurisprudence of other international courts and monitoring bodies. Article 14 of the Convention and Article 2 of the Covenant stipulate that the enjoyment of the rights and freedoms set forth in the respective treaties shall be secured without discrimination on any ground. Article 26 of the Covenant goes further and guarantees an independent right to equality before the law, equal protection of the law, prohibition of discrimination and protection against discrimination. The European Court and the Committee on Human Rights have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly 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 of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see the above-mentioned *Hermas* decision, loc.cit., p. 197, paragraphs 86 et seq., and the *Kevešević* decision, loc.cit., p. 221, paragraph 92).

73. In the present case both *amicus curiae* and the witnesses examined by the Chamber have stated that there is a pattern of discrimination against persons of Bosniak origin with respect to the enjoyment of their rights before the courts of Canton 10. The respondent Party has conceded that there is "a problem" in the court system in Canton 10 "in respect of both efficiency and independence".

74. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see the above-mentioned *Matanović* decision, loc.cit., paragraph 56, with references to corresponding case law of the European Court).

75. The Chamber notes that Canton 10 is comprised of a majority population of Croat descent where, consequently, the applicant belongs to a minority population. Both the Constitution of Bosnia and Herzegovina (Chapter V(11)) and the Constitution of Canton 10 (Article 51) stipulate that the composition of the judiciary shall reflect the population structure of the Canton. Canton 10's own Law on the Judiciary provides in Article 46 that the judges of the municipal courts shall be appointed by the President of the Cantonal Court following consultations with the relevant Mayor. Under Article 47 judges of the Cantonal Court are appointed by the Cantonal Assembly on the proposal of the Governor of the Canton.

76. The Chamber considers at the outset that the manner in which municipal judges are appointed in Canton 10, namely after consultations with the leading local politician who may normally be presumed to have been elected from the party supported by a majority of the population in the municipality, lend credence to the susceptibility of judges to political influence. In this respect the Chamber notes Governor Baković's letter of 28 October 1997 which seeks to influence the judges and mayors not to evict displaced persons from their temporary dwellings. Even if the letter does not recommend such non-execution solely in respect of displaced persons who are temporarily occupying dwellings owned by Bosniaks, it is clear that the Governor's intention was to instruct the judges of the Canton to refrain from certain action. First and foremost, the Governor's letter discloses his perception that the judges of the Canton could and should be influenced by such a message.

77. Turning to the composition of the tribunal now in question, the Chamber finds it established that out of the six judges on the Livno Municipal Court none is of Bosniak origin and that hardly any Bosniaks have been appointed to the municipal administration. According to the witness evidence, the Livno Municipal Court has rarely if ever processed law suits filed by returning Bosniaks against temporary occupants from the Bugojno area. The reason for such inertia appears to be, if not a genuine pressure on judges either to delay hearing cases involving Bosniak plaintiffs or face negative consequences, then at least a perception among judges that such cases should be resolved by political means (see paragraphs 33-34). The Chamber also notes the written concession of the judge who refused to testify before it, to the effect that "difficulties" exist with regard to the passing of judgements involving a party of Bosniak origin and particularly as regards their enforcement (see paragraph 8 above).

78. The Chamber recalls that the applicant's ownership of the house in question has never been in dispute. Nevertheless, her attempts to seek assistance from the authorities in order to regain the actual control over that property have been met by complete silence both at the judicial and administrative level. The Chamber further notes that in none of the 55 other cases, in which similar proceedings have been initiated before the Livno Municipal Court with the assistance of the Centre for Affirmation of Human Rights and Freedoms and which appear to have been initiated predominantly by Bosniaks, has there been any development. On the other hand, the Chamber also finds it established that claims submitted by plaintiffs of Croat origin have resulted in swift action by the Livno Municipal Court, whereas other claims submitted earlier, including the applicant's claim, have resulted in no action on the part of the court.

79. The evidence before the Chamber suggests that in Canton 10 there is a pattern of discrimination consisting of the courts' and the municipal authorities' failure to process claims for repossession of property belonging to returning Bosniaks, or of not enforcing judgements rendered in favour of such plaintiffs against defendants of the Croat majority, whether or not they are lawful temporary occupants. For the purposes of this case, the Chamber need not determine whether this pattern of discrimination is based on an outright policy seeking to discourage the return of Bosniak refugees to Canton 10.

80. In light of all the aforementioned considerations the Chamber finds it established that in the proceedings before the Municipal Court of Livno as well as in her dealings with the municipal administration the applicant, on account of her Bosniak origin, has been subjected to differential treatment compared with the Croat majority in similar situations. The respondent Party has not suggested any justification for the differential treatment in issue and the Chamber cannot, of its own motion, find any such justification. Accordingly, the applicant has been discriminated against in the enjoyment of her right under Article 6(1) of the Convention to a fair hearing before an independent and impartial tribunal, and in the enjoyment of her right under Article 26 of the Covenant to equal protection of the law. The discrimination found has also barred the applicant from any effective use of a remedy on the domestic level within the meaning of Article 13 of the Convention and has prevented her from returning to her home and property within the meaning of Article 8 of the Convention and Article 1 of Protocol No. 1.

81. The Chamber concludes that the applicant has been discriminated against in the enjoyment of her rights under Articles 6, 8 and 13 of the Convention, Article 26 of the Covenant and Article 1 of Protocol No. 1 to the Convention.

82. The Chamber will next consider the case under Article II(2)(a) of the Agreement in relation to Articles 6, 8 and 13 of the Convention as well as to Article 1 of Protocol No. 1 of the Convention in isolation. In doing so it will have regard also to the facts and circumstantial evidence on which it has based its findings of discrimination in the enjoyment of the applicant's rights under the Agreement.

2. Article 6 of the Convention

83. The Chamber has considered under Article 6 of the Convention in isolation whether the applicant can expect to have the dispute regarding her right to her home and property determined within a reasonable time by an independent and impartial tribunal within the meaning of this

provision.

84. The Chamber has already found that the civil proceedings instituted by the applicant have been met by silence, a situation which has continued up to this day. Accordingly, there is a continuing deprivation of the applicant's right of effective access to court for the purpose of having her civil claim determined within a reasonable time, as guaranteed by Article 6 (cf., e.g., *Medan and Others v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, Cases Nos. CH/96/3, 8, and 9, decision of 7 November 1997, Decisions 1996-1997, paragraph 40). The Chamber finds no justification for this procrastination.

85. In considering whether a judicial body is "independent" for the purposes of the Convention, the Chamber will consider the manner of appointment of the judges, the duration of their term of office, the existence of guarantees against outside pressures and the question of whether a body presents an appearance of independence (see, e.g., *Damjanović v. the Federation of Bosnia and Herzegovina*, Case No. CH/96/30, decision on the merits of 5 September 1997, Decisions 1996-97, paragraph 39-40). In respect of the last criterion the Chamber recalls that justice must not only be done, it must also be seen to be done. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see, e.g., Eur. Court HR., *Sramek v. Austria* judgement of 22 October 1984, Series A No. 84, p. 20, paragraph 42).

86. The Chamber notes that under Article 46 of the Law of Canton 10 on the Judiciary the judges of the municipal courts are appointed by the President of the Cantonal Court following consultations with the Mayor of the relevant municipality. Article 47 of the same law provides that the judges of the Cantonal Court are appointed by the Cantonal Assembly, a political body. The appointment of judges by a political assembly may as such be acceptable under Article 6(1) of the Convention, if the practice of appointment as a whole is satisfactory and there exist guarantees against outside pressures (see *Crociani and Others v. Italy,* European Commission of Human Rights, decision of 18 December 1980, Decisions and Reports No. 22, p. 147, 220 et seq.). It is also true that under Article 52 of the Constitution of Canton 10 municipal and cantonal judges shall serve up to the age of 70, unless they resign or are removed from office if they do not achieve "satisfactory" results or on one of the other grounds enumerated in Article 55 of the Canton 10 Law on the Judiciary.

87. In this case, however, it has not been contested by the respondent Party, and it would appear established, that the current practice in Canton 10 is that only members or sympathisers of the ruling Croat party are appointed to judicial office. The respondent Party has in fact conceded that there is "a problem" in the court system in Canton 10 "in respect of both efficiency and independence". In addition, one of the witnesses before the Chamber has testified that the judge on the applicant's case had received the letter of the Governor of the Canton dated 28 October 1997 (see paragraphs 23 and 35). The Chamber need not determine whether this letter is formally binding on judges in the Canton to the effect that they shall refrain from processing certain claims for repossession of property such as the civil action brought by the applicant. The evidence before the Chamber is sufficient to reveal that at least some of the judges in Canton 10, for fear that their tenure might be subject to political considerations resulting in their removal from office for reasons other than those prescribed by law, feel compelled to act in a manner accommodating certain political views. In the Chamber's opinion it is therefore very likely that the judge on the applicant's case before the Livno Municipal Court does not process the case for the aforementioned reason.

88. The Chamber has found, moreover, that the applicant has been discriminated against, *inter alia,* in the enjoyment of her right to a fair hearing before an independent tribunal within the meaning of Article 6(1) of the Convention. With reference also to the reasons on which it has based its finding of discrimination, the Chamber concludes that an objective observer may legitimately doubt that the Municipal Court in Livno in general and the judge on the applicant's case in particular have been and will be independent in the applicant's case. A court which is not entirely independent of the political bodies cannot objectively comply with the requirement of impartiality. It follows from the above finding that the applicant cannot, as matters stand today, expect to receive a fair hearing of her case before the Livno Municipal Court.

89. For the various reasons above, the Chamber concludes that the applicant's rights under Article 6(1) of the Convention have been violated already at the present stage of the proceedings before the Livno Municipal Court.

3. Article 8 of the Convention

90. The Chamber noted in *Blentić v. The Republika Srpska*, (loc.cit., paragraph 26) that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees, and that in this context, as in others, a fair balance must be struck between the general interest and the interests of the people concerned. The Chamber held that the authorities of the respondent Party had failed to take effective, reasonable and appropriate measures to deal with the difficulties posed by an assembly of people obstructing the applicant's return to his home. The police had remained completely passive and no attempt had been made to prosecute those responsible for the obstruction. Such a situation was incompatible with the rule of law and had therefore violated Article 8 (ibid., paragraphs 28-29).

91. In the present case the Chamber finds that the passivity shown by the municipal and cantonal authorities in response to the applicant's various petitions aiming at her being able to re-enter a house which is indisputably hers amount to a lack of respect at least for her "home" within the meaning of Article 8(1) of the Convention. The respondent Party has made no attempt to justify this lack of respect. Nor can the Chamber find any such justification of its own motion. The Chamber therefore concludes that the applicant's rights under Article 8 of the Convention in isolation have also been violated.

4. Article 13 of the Convention

92. As the Chamber has recalled in *Galić v. The Federation of Bosnia and Herzegovina*, Article 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. For Article 13 to apply, it is not necessary for an applicant to show an actual violation of another one of his Convention rights; it is sufficient that he has an arguable claim that such a violation has occurred (Case No. CH/97/40, decision of 12 June 1998, Decisions and Reports 1998, p. 149, et seq., paragraph 53 et seq., with further reference to case law of the European Court).

93. "Effectiveness" in the context of Article 13 comprises four elements: institutional effectiveness, which requires that a decision-maker be independent of the authority at fault for the alleged or actual violation; substantive effectiveness, which requires that the applicant be able to raise the substance of the right at issue before the national authority before which he is seeking the remedy; remedial effectiveness, which requires that the national authority be capable of finding a violation of the right or rights of the applicant which are at issue and material effectiveness, which requires that any remedy the applicant may have awarded in his favour be such that the applicant may take effective advantage of it (ibid.)

94. The present applicant clearly had an arguable claim that her rights had been violated and accordingly she was entitled to an effective remedy in respect of those claims. The Chamber has already found that there has been no response whatsoever to the applicant's various claims and petitions to the administrative authorities. It follows that in this respect there has also been a violation of Article 13 of the Convention in isolation.

5. Article 1 of Protocol No. 1

95. In the present case the term "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention includes the applicant's house and surrounding real property. The Chamber recalls that Article 1 of Protocol No. 1 contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's fundamental rights (see, e.g., the aforementioned *Blentić* decision, loc.cit., paragraphs 31-32). Although States Parties to the Convention enjoy a wide margin of appreciation in

judging what is in the general interest, that judgement must not be manifestly without reasonable foundation (see Eur. Court H.R., *James and Others v. the United Kingdom* judgement of 21 February 1986, Series A no. 98, p. 32, paragraph 46). In the assessment of whether an applicant has had to bear "an individual and excessive burden" it is also of relevance whether he has had the possibility of effectively challenging the measure taken against him (see Eur. Court HR., *Hentrich v. France* judgement of 22 September 1994, Series A No. 296-A, p. 21, paragraph 49). Article 1 of Protocol No. 1 may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights (see, e.g, the aforementioned *Blentić* decision, loc. cit., paragraph 32 and the case law of the European Court referred to therein). Such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction.

96. The Chamber is here concerned with a failure by the authorities to protect the applicant against a continuing unlawful occupation of her possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Chamber finds, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that this failure of the authorities to assist the applicant in recovering her property also amounts to a breach of her rights under Article 1 of Protocol No. 1 in isolation.

6. Conclusion

97. Summing up, the Chamber has found that this case involves discrimination against the applicant in the enjoyment of her rights under Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 26 of the Covenant. The case further involves separate violations of Articles 6, 8 and 13 of the Convention as well as Article 1 of Protocol No. 1 to the Convention.

VII. REMEDIES

98. Under Article XI(1)(b) of the Agreement the Chamber must address the question what steps shall be taken by the respondent Party to remedy breaches of the Agreement which it has found, including orders to cease and desist, and monetary relief.

99. The applicant requests that the respondent Party enable her to return to her home. In a letter of 5 February 1999 the applicant also requests compensation in the total amount of DEM (German Marks) 6,910 for rent paid elsewhere (DEM 120 per month during a period of 13 months = DEM 1,560; water and electricity costs incurred by the applicant's husband and daughter while living with the applicant's parents-in-law (DEM 150 a month = DEM 1950); costs in the amount of DEM 450 incurred for the schooling of the applicant's son elsewhere (books, costs for his transfer and admission into another school, transportation costs and clothing), costs for the wardrobe of her daughter of DEM 300; costs for winter food supply of DEM 250; lost revenue from the sale of vegetables from her garden of DEM 350; and DEM 2,050 for costs incurred coming to Sarajevo for the hearing as well as other legal costs. The applicant explained her tardiness in claiming compensation by the fact that she had appeared before the Chamber as a lay woman and that at the time of the hearing her only wish was to return home.

100. The respondent Party submits that no compensation should be awarded. As for the claims regarding winter food provisions and expenses relating to the applicant's children, the respondent Party submits, in the alternative, that these costs would have been incurred even if the applicant and her family had remained in her home. These claims are therefore ill-founded. All other costs have not been substantiated. In any case, the claims should have been put before the Chamber in accordance with its Order of proceedings.

101. In the present case the Chamber finds it appropriate to order that the respondent Party through its authorities take immediate steps to reinstate the applicant into her house.

102. The Chamber notes that the applicant was warned at an early stage of the proceedings that, subject to an exception, any compensation claim must be submitted either during the written proceedings preceding the hearing or, in respect of certain expenses, at the hearing itself. Prior to the

hearing the applicant explicitly stated that she had no claims. In these circumstances the Chamber considers that the reasons invoked by the applicant in support of the compensation claim for pecuniary damage which was lodged only after the hearing do not constitute grounds for taking that claim into account. It must therefore be rejected.

103. The Chamber notes, however, that at its hearing the applicant made a general claim for compensation for pain and suffering, thereby affording the Agent of the respondent Party a possibility to comment thereon. Article XI(1)(b) of the Agreement does not preclude the Chamber from ordering monetary relief not quantified by an applicant. The Chamber finds that the applicant has suffered a feeling of injustice stemming from her treatment by the authorities. She has further suffered from a *de facto* loss of her home resulting in the separation of her family. By its nature, the damage suffered does not lend itself to precise quantification. Deciding on an equitable basis, the Chamber will award the applicant KM (*Konvertibilnih Maraka)* 4,000 in respect of damage up to and including the date of this decision. Further compensation in the amount of KM 10 a day will be payable to the applicant from the day of delivery of the Chamber's decision until she is reinstated into her house (cf. the aforementioned *Galić* decision, loc.cit., p. 150, paragraph 67).

VIII. CONCLUSIONS

104. For the reasons given above, the Chamber decides:

1. by 9 votes to 4, to declare the application admissible under Article VIII of the Agreement;

2. by 9 votes to 4, that the applicant has been discriminated against in the enjoyment of her rights under Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 26 of the Covenant, the respondent Party thereby being in violation of Article I of the Agreement;

3. by 9 votes to 4, that there has been a violation of the applicant's right under Article 6(1) of the Convention to a fair hearing within a reasonable time before an independent and impartial tribunal established by law, the respondent Party thereby being in violation of Article I of the Agreement;

4. by 9 votes to 4, that there has been a violation of the applicant's right under Article 8(1) of the Convention to respect for her home, the respondent Party thereby being in violation of Article I of the Agreement;

5. by 9 votes to 4, that there has been a violation of the applicant's right under Article 13 of the Convention to an effective remedy before a national authority, the respondent Party thereby being in violation of Article I of the Agreement;

6. by 9 votes to 4, that there has been a violation of the applicant's right under Article 1 of Protocol No. 1 to the Convention to the peaceful enjoyment of her possessions, the respondent Party thereby being in violation of Article I of the Agreement;

7. by 9 votes to 4, to order that the respondent Party through its authorities take immediate steps to reinstate the applicant into her house;

8. by 9 votes to 4, to order the respondent Party to pay to the applicant, within three months, KM 4,000 by way of compensation for non-pecuniary damage;

9. by 8 votes to 5, to order the respondent Party to pay to the applicant, within three months from her reinstatement and by way of further compensation for non-pecuniary damage, KM 10 for each day from the date of delivery of the present decision until she is reinstated into her house;

10. by 9 votes to 4, that simple interest at an annual rate of 4% will be payable over the above sums or any unpaid portion thereof from the day of expiry of the above-mentioned three-month periods until the date of settlement;

11. unanimously, to order the respondent Party to report to the Chamber by 14 August 1999 on

the steps taken by it to comply with the above orders.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate dissenting opinion by Mr. Vlatko Markotić and Mr. Želimir Juka, joined by Mr. Vitomir Popović and Mr. Miodrag Pajić:

SEPARATE DISSENTING OPINION OF MR. VLATKO MARKOTIĆ AND MR. ŽELIMIR JUKA, JOINED BY MR. VITOMIR POPOVIĆ AND MR. MIODRAG PAJIĆ

I. INTRODUCTION

Before the beginning of the war in 1992 Bosnia and Herzegovina had about four million inhabitants. During the war an exodus of the population took place so that on 14 December 1995, the day of the entry into force of the General Framework Agreement for Peace in Bosnia and Herzegovina, there were two million refugees and displaced persons which is half of the pre-war population. Before the Chamber made this decision (three years after the entry into force of the General Framework Agreement) several hundred thousand refugees had come back from exile assisted by the international community, through the machinery prescribed by the Annex 7 Agreement on Refugees and Displaced Persons which - pursuant to Article 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina - makes Annex 7 a constituent part thereof. (No one has returned through the machinery of Annex 6.) According to this Article, the protection of refugees and displaced persons is OF VITAL IMPORTANCE IN ACHIEVING A LASTING PEACE in Bosnia and Herzegovina. In our opinion, this context forms the right way in which the proceedings before the Chamber should have been directed, as the applicant is a refugee who has the right to and wants to return to her home, but her home has been occupied by some other refugees who are unable to return to their home despite wishing to do so, given that their home was destroyed during the war. According to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) there are still 1,231,100 refugees who have not yet returned to their homes.

II. RELEVANT PROCEDURAL FACTS

1. Application for re-possession of the applicant's house lodged with the Commission for Real Property Claims of Displaced Persons and Refugees established under Annex 7 of the Dayton Agreement ..... on 18 May 1998

2. Application for re-possession of the applicant's house lodged with the Municipality of Livno .....on 18 May 1998

3. The applicant escaped to Switzerland because of the war.....in 1993

4. After she had gone into the exile the house was abandoned and according to the facts in the application the refugees from Bugojno moved in.....on 10 September 1993

5. The applicant returned from exile to Livno.....in January 1998

6. Application for re-possession of her house was submitted to the Human Rights Chamber.....on 10 July 1998

7. The applicant submitted a complaint to an incompetent authority – the Municipal Court in Livno - whereby she sought repossession of her house from the refugee, B.J.,.....on 14 October 1997

C O N C L U S I O N

1. Seeking to regain possession of her house, the applicant applied to the Annex 7 Commission established by the Dayton Agreement and to the Municipality of Livno (which is competent for considering repossession of abandoned real property) two months before she applied to the Human Rights Chamber. The proceedings before the Annex 7 Commission and the Municipality of Livno had been pending for seven months when a public hearing was held before the Chamber.

2. Proceedings before the Municipal Court in Livno (which is incompetent for the repossession of abandoned real property) have been pending for fourteen months.

3. Abandoned real properties, pursuant to the laws of the Federation, fall within the jurisdiction of the Municipality, and the application for repossession of the house was submitted against the refugee occupying the applicant's house.

III. RELEVANT SUBSTANTIAL FACTS

1. The applicant is a joint owner of a house in Livno. During the war in Bosnia and Herzegovina she escaped to Switzerland in 1993 with her husband and two children, and her house was abandoned.

2. After she had gone into exile, as stated in the application to the Chamber, Mrs. J. with her three children, on 10 September 1993, moved into the applicant's house; together with her children she had fled from the nearby Municipality of Bugojno. She had no place to go back to as her house had been destroyed in the war.

3. During the war between the Bosniaks and Croats the Municipality of Livno was controlled by the Croat Army, and the Municipality of Bugojno by the Bosnian Army.

4. The applicant returned from exile in Switzerland in January 1998.

5. Regarding the fact that one of Mrs. J.'s sons is employed in the police force of the Federation BiH in Bugojno and commutes to and from Livno (about 70 kilometres), the applicant requested the authorities in Bugojno to provide accommodation in Bugojno for their police officer, his mother and brothers, so that she (the applicant) would be able to move back into her house in Livno with her family. The authorities in Bugojno (consisting exclusively of Bosniaks) did not find any solution for accommodating the J. family and the applicant's initiative was in vain. Due to this failure the applicant, on the same day (18 May 1998) applied to the Commission for Real Property Claims of Displaced Persons and Refugees established under Annex 7 of the Dayton Agreement and the municipal authorities in Livno requesting to regain possession of her house. Two months following that, on 10 July 1998, she made a similar request to the Human Rights Chamber.

6. On the occasion of the applicant's visit to her house, she demanded that the refugee, Mrs. J., return possession of her house, which Mrs. J. did not do but replied that she would do so when the authorities would provide her with another house instead of the destroyed one.

The aforementioned facts compared with the facts in the introduction to this separate opinion (in Bosnia and Herzegovina the issue of accommodation - home - house still remains unsolved for about a million and a half refugees and displaced persons) are only the relevant facts regarding the direction in which the proceedings before the Human Rights Chamber should have been conducted. All other allegations in the Chamber's decision are essentially not substantial facts but consequences of the relevant substantial facts mentioned in this chapter as well as in the introduction to this separate opinion.

7. At the stage of the written proceedings the Chamber never received the respondent Party's observations on the admissibility and merits. Therefore the Chamber's action was correct when, on the basis of its competence under Article X(1) of Annex 6 to the Dayton Agreement, it started *ex officio* to gather evidence about the alleged violation of human rights. However, when the Chamber

decided to collect evidence *ex officio*, it should have requested such evidence from the authorities of the Federation, Canton 10 and the Municipality and not from the institutions from which such evidence was sought, as those have no relevant evidence at their disposal except possible incomplete general information, which may be everyday political or personal opinions. Such information is not sufficiently comprehensive for the substantial truth to be established. Therefore the procedure for establishing the relevant substantial facts should have been directed at searching for evidence from the Federal Ministry for Refugees and Displaced Persons, from the Ministry for Displaced Persons and Refugees of Canton 10 and from the municipal executive authorities responsible for solving the status of refugees as these are the only competent authorities in the Federation which, together with the UNHCR, the International Mediator for the Federation and the other Annex 7 institutions, have the exclusive competence to define and implement mechanisms concerning the return of all refugees in a region, according to the plans and programs of return, which involve the reconstruction of destroyed houses, repair of the damaged ones, construction of temporary settlements etc., etc. There is no implementation of Annex 7 without that. In the same way, i. e. *ex officio*, it should also have been established what the Federal Ministry for Refugees and Displaced Persons had done and what it had failed to do with a group of refugees who had returned from Switzerland; the applicant was one of them; and whether or not the authorities had implemented the plans for return which encompass both the applicant and Mrs. J.

8. It is not to be established through witnesses, or on the basis of their personal opinion, whether the judiciary in Livno is functioning or not. If this fact is a relevant one, evidence should not have been sought from a new inexperienced non-governmental organisation in Livno and from the Assistant Ombudsman of the Federation, but from the Ministry of Justice of the Federation and Canton 10, as well as from the Municipal Court and Cantonal Court, which regularly submit reports about their work to the legislative authority. Indeed it would not have been difficult to obtain such reports. Only on the basis of such reports could the assessment whether the Court in Livno is functioning have been made.

9. A time limit was set for the applicant to submit any claim for compensation before 23 November 1998. In a letter dated 18 November 1998 the applicant explicitly stated that she did not wish to submit such a claim at that time. At the hearing the applicant was invited to state any claim for compensation but she did not request any specific sum for pecuniary or non-pecuniary damage, despite persuasion during the hearing.

C O N C L U S I O N

1. The applicant, a refugee, is the owner of a house which has been occupied by another refugee whose house was destroyed in the course of the war. The proceedings before the Chamber did not reveal in which way the enforcement of the issue of home for both of the refugees had been planned.

2. The applicant did not submit a claim for any kind of compensation foreseen under Article XI (1)(b) of Annex 6, i.e. for pecuniary and non- pecuniary damages.

3. On her return from exile in Switzerland, the applicant became a displaced person within the Federation and she did not assert the right to accommodation and other things as provided to displaced persons by Annex 7 to the Dayton Agreement.

IV. PROCEEDINGS BEFORE THE MUNICIPAL COURT OF LIVNO

1. In the course of the war half the population of Bosnia and Herzegovina were in exile. The authorities at that time as well as the international community were faced with a refugee catastrophe, particularly for the reason that several hundred thousand houses and homes had been destroyed. It was a human tragedy the consequences of which have today been remedied by various international mechanisms and by those prescribed by the laws of the Federation. In those circumstances, the legislative and executive authorities during the war passed a TEMPORARY regulation which was called the Law on TEMPORARILY Abandoned Real Property Owned by Citizens, for the purpose of accommodating refugees. THESE REAL PROPERTIES WERE PLACED UNDER THE ADMINISTRATION OF THE MUNICIPALITY for the purpose of housing refugees and displaced persons ("*Službeni list RBiH*" No. 11/93 and 13/94). Such an act of the authorities during the war, WHEN THE USE OF

POSSESSIONS BECAME LIMITED was, without doubt IN THE GENERAL AND PUBLIC INTEREST, in accordance with the second paragraph of Article 1 Protocol No. 1 to the Convention.

In co-ordination with the High Representative for Bosnia and Herzegovina and the team of experts from his Office, the quoted war Law on Temporarily Abandoned Real Property Owned by Citizens was repealed by the Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens ("*Službene novine Federacije BiH"*, No. 11 of 3 April 1998). Pursuant to Article 3 of this Law, and on the basis of the second paragraph of Article 1 Protocol No. 1, the real properties declared abandoned by the war Law still remain under the administration of the Municipality until their return to the owner, due to the physical impossibility that the remaining million and a half of refugees immediately be cared for. Pursuant to Article 11 of the same Law, the municipal administrative organ (not a court) is the competent authority for the return of real properties to the owners, and pursuant to Article 12 of this Law, the very last time-limit for the return of a real property to its owner shall be one year following the day of filing a claim for repossession. Within this time limit an alternative accommodation must be ensured for the temporary user (a refugee).

The time limit in question expires on 18 May 1999 (after the adoption of the Chamber's decision). Against a possibly negative decision by the municipal administrative organ on the request for return of a real property to the owner, an appeal may be lodged with the administrative organ of the Canton (Article 13 of the Law). If the second instance organ also makes a negative decision, or does not make any decision at all, an administrative dispute may be initiated before the Cantonal Court. These remedies have not been exhausted. THE GENERAL PRINCIPLE OF INTERNATIONAL LAW IS BASED ON THE BELIEF THAT EVERY POSSIBILITY SHOULD BE AFFORDED TO A STATE TO REMEDY THROUGH ITS LEGAL CHANNELS A BREACH OF ITS INTERNATIONAL OBLIGATIONS (European Court of Human Rights, the judgment *of Guzzardi v. Italy* of 1980*,* European Court of Human Rights, Series A No. 39). That is why an applicant must exhaust all remedies foreseen in the domestic law.

2. Article 14 of the aforementioned Law of the Federation dated 3 April 1998 prescribes that if a person seeking the return of real property lodges the same request with the Annex 7 Commission for Property Claims of Refugees and Displaced Persons all proceedings pending before the authorized organs (not to mention the unauthorized ones) will be suspended until the decision of the Annex 7 Commission which shall be FINAL AND BINDING. (What is more, the proceedings will be suspended even if they were at the stage of enforcement.) This legal solution is identical to the legal principle stated in Article VIII(2)(d) of Annex 6 to the Dayton Agreement.

C O N C L U S I O N

1. The Municipal Court in Livno is not competent to decide on the return of temporarily abandoned real properties when such a property is occupied by another refugee.

2. Even if the Court were to have such competence, the application should have been submitted to the Municipality which has the competence to rule over the abandoned real properties.

V. COMPETENCE FOR PROTECTING TEMPORARILY ABANDONED REAL PROPERTIES WHEN SUCH PROPERTY WAS OCCUPIED BY ANOTHER REFUGEE IN THE COURSE OF THE WAR, AND THIS STATUS REMAINS

A. 1. The chapter of this separate opinion entitled RELEVANT SUBSTANTIAL FACTS resulted in the conclusion that the applicant is a refugee and the owner of a house which is occupied by another refugee whose house was destroyed in the war. The applicant is seeking to regain possession of her house before all domestic authorities, the Annex 7 Commission of the Dayton Agreement and before the Human Rights Chamber.

2. The following are relevant provisions of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) and its Annexes:

a) The basic principles of the Dayton Agreement set out in Article VII are:
- the observance of human rights through the machinery of Annex 6

- the protection of refugees and displaced persons through the machinery of Annex 7, which relates to their right to return, and the right to have their property restored to them.

In Article VII of the Agreement it is pointed out explicitly that these two rights are of "vital importance in achieving a lasting peace". For the purpose of these two rights two quasi-international bodies *sui generis* have been established with a five- year mandate; their decisions shall be final.

b) Pursuant to Article VIII (2) of Annex 6 the Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decisions of cases, or any other Commission established by the Annexes to the General Framework Agreement for Peace in Bosnia and Herzegovina.

c) Article I of Annex 7 reads as follows:
"ALL refugees and displaced persons have the right freely to return TO THEIR HOMES..."

d) Article II (1) of Annex 7 provides as follows:
"...The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, ORDERLY AND PHASED MANNER, IN ACCORDANCE WITH THE UNHCR REPATRIATION PLAN." (This provision is consistent with the second paragraph of Article 1 Protocol No. 1 of the European Convention on Human Rights.)

e) Article III (1) of Annex 7 reads: "The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with the role of coordinating among all agencies assisting with the repatriation and RELIEF of refugees and displaced persons."

f) By Annex 7 a Commission for Displaced Persons and Refugees has been established, and in Article IX it is foreseen that the Commission shall be composed of nine members; the Federation of Bosnia and Herzegovina shall appoint four members and Republika Srpska shall appoint two members, for a term of either three or four years. The President of the European Court of Human Rights shall appoint the remaining members, each for a term of five years.

g) Article XI of Annex 7 governs the mandate (of the Commission) and reads as follows:
"The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return." Not without reason, the competence of the Commission goes back to 1 April 1992 (when the war in Bosnia and Herzegovina began), while the Chamber is competent for violations of human rights which allegedly took place after 14 December 1995 (the day of the entry into force of the Dayton Agreement).

h) Article XII(2) of Annex 7 provides as follows: "Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. ..."

i) Pursuant to Article XIII, "(the) Parties ....may temporarily house refugees and displaced persons in vacant property, subject to final determination by the Commission and to such temporary lease provisions as it may require." (This provision is also consistent with the second paragraph of Article 1 Protocol No. 1 to the Convention which allows limitations on the use of possessions in accordance with the public interest.)

B. The Agreement on Implementing the Federation of Bosnia and Herzegovina, signed in Dayton on 10 November 1995 (item E; titled *Refugees and Displaced Persons*) provides as follows:

"by 10 December 1995, the Minister for Refugees and Social Policies and his Deputy Minister together shall establish a comprehensive and detailed plan for the return of refugees and displaced persons in the Federation territory. Implementation of this plan will begin immediately. We shall closely cooperate with UNHCR in developing and implementing the plan." (Neither in this Agreement nor in any of the other numerous agreements was any matter placed within the jurisdiction of the

municipal courts in the Federation.)

C. The applicant made a claim for the return of her house to the Annex 7 Commission on 18 May 1998, following which she filed an application to the Human Rights Chamber for the return of her house, on 12 July 1998.

C O N C L U S I O N

1. The applicant obviously chose to realize her right by means of the Annex 7 machinery which she had addressed two months before she sought the same right from the Human Rights Chamber.

2. The return of all the refugees and displaced persons to their houses and homes and caring for those whose houses were destroyed or heavily damaged and who are currently occupying the houses of other refugees are being settled by means of the Annex 7 machinery. According to that, no one shall be left without shelter and food, as every human being as such enjoys human rights. This problem involving a million and a half of refugees could never be solved by decisions of the municipal courts in Bosnia and Herzegovina. If the courts were able to solve this problem the engagement of this huge international apparatus and domestic executive authorities would be unnecessary.

VI. REGARDING THE LETTER OF THE GOVERNOR OF THE HERZEG-BOSNIAN CANTON DATED 28 OCTOBER 1997

1. The subject of the letter is as follows: "Subject: Conclusions relating to the accommodation of the exiled" (refugees and displaced persons)

2. The letter states that on 6 July 1997 it was agreed with the International Mediator for the Federation, Dr. Christian Schwarz-Schilling, as follows:

a) " displaced persons must not be evicted from the houses they are occupying no matter to whom they belong (Serbs, Croats, Moslems);

b) displaced persons are to remain in the dwellings which they occupy, until their status is solved, either by enabling them to return to their own homes or by finding them alternative accommodation, …."

This letter was addressed to the executive and judicial authorities of the Canton, and the final sentence of this letter reads as follows: "YOU ARE KINDLY REQUESTED that the competent services BE INFORMED ABOUT THIS."

C O N C L U S I O N

1. The Governor Baković did not issue any order.

2. The Governor only informed the authorities of the Canton of the content of the agreement on the status of refugees and displaced persons reached with the International Mediator for the Federation. Otherwise, he would have been responsible pursuant to Annex 10 to the Dayton Agreement.

3. The conclusions listed in the Governor's letter are in fact the conclusions of the international community, and if there was any suspicion in this respect, this should have been checked in the Office of the international mediator for the Federation, not through witness Osmančaušević, who was not obliged to and did not participate in all the meetings.

4. The conclusions listed in the Governor's letter are in accordance with Annex 7 of the Dayton Agreement and all international Conventions which govern the status of refugees, as set out in chapter V of this separate opinion.

VII. REVIEW OF PARTICULAR PARAGRAPHS OF THE CHAMBER'S DECISION ON THE ADMISSIBILITY AND MERITS

AD III 17 a) In her complaint to the Municipal Court in Livno of 14 October 1997 the applicant explicitly stated that her house had been occupied by a refugee from Bugojno AFTER SHE HAD GONE INTO EXILE.

b) On 24 September 1997, in her claim for the return of her house submitted to Municipal Administration, the applicant stated, in particular, that after she had abandoned the family house a refugee from Bugojno had moved in.

c) On 18 May 1998, in her claim for the return of the house which she submitted to the Municipal Court of Livno, the applicant stated, in particular, that she had been living in her house with her children until the end of 1993.

d) On 10 July 1998, in her application submitted to the Human Rights Chamber, the applicant stated that her house had been occupied on 10 September 1993.

e) At the public hearing before the Chamber on 17 December 1998, the applicant stated that her house had been broken into by the refugees from Bugojno on 10 September 1993.

The applicant did not explain the above-stated contradictions. The Chamber did not give any reasons in support of its finding that the applicant was forced out of her house on 10 September 1993.

AD II 5 The applicant claimed compensation before the Chamber on 5 February 1999, and the public hearing was held on 17 December 1998. She was invited at the hearing by some participants in the proceedings to claim compensation but she did not do so. Before the public hearing she had informed the Chamber that she did not wish to submit a claim for compensation.

For the above stated reasons the applicant' s right to compensation cannot be recognised.

AD II 7, 8 Judge Kolak is a judge of the Municipal Court in Tomislavgrad, while the applicant's case is pending before the Municipal Court in Livno. No authority exists, in particular not executive, in respect of how the Municipal Court of Livno should adjudicate cases following orders by a judge of the Municipal Court of Tomislavgrad. Judge Kolak's letter which the Chamber received on 14 December 1998 was missing from the list of documents which were distributed to the members. We did not get a copy of judge Kolak's letter and probably the other members of the Chamber did not get it either.

We are suspicious as to whether this letter contains any relevant facts regarding this case, and, at the same time, it is not incumbent on us now to investigate and make evaluations of the facts contained in this letter, as the procedure involving the Parties was concluded without the information contained therein.

In the case of Đ.M. it is not relevant what judge Kolak was doing. What could be relevant is whether the Judge in the Đ.M. case was ordered how to adjudicate and whether such an order was obeyed. In this respect the Chamber did not establish a single fact.

AD III 22 The time-limit set for receiving a response from the second instance organ in the administrative procedure following the applicant's appeal expired on 2 January 1999. The Chamber's public hearing was held on 17 December 1998 and the Chamber's decision was made before the expiry of this time limit.

AD III 24 The letter of the International Mediator, Dr. Schwarz-Schilling, of 20 March 1998 was placed on the list of documents which were distributed to the members of the Chamber before the public hearing. We, being the members of the Chamber, did not receive this letter but we doubt that this letter would result in the conclusion that the applicant, who is a refugee, should be reinstated in her house which is occupied by another refugee, before a shelter for this refugee is provided.

For the reasons given above, we neither have the right nor is it incumbent on us to seek and evaluate the relevance of this proof after the close of the procedure involving the Parties to the proceedings.

AD 59 and 60

1) In paragraph 59 of its decision the Chamber quoted incorrectly the mandate of the Annex 7 (Article 11) Commission. Article 11 of Annex 7 reads as follows:

"The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return."

For the reasons given above, the conclusion in paragraph 60 of the decision that the Chamber is competent in this case is not correct.

2) In her applications to the Chamber and to the Annex 7 Commission and in all her claims to the domestic authorities the applicant seeks only to be reinstated into her house. It is her only reason for initiating these proceedings.

On the ground of the above-stated, it can be concluded that the Chamber only expressed its opinion, without any reasoning, that it is competent in this case, but did not quote any legal basis for its competence as set out in Annex 6 or in any other section of the General Framework Agreement for Peace in BiH.

AD 61 The Chamber notes that the burden of proof is on the respondent Party to show that available remedies exist. This is contrary to Article VIII 2(a) of Annex 6 which reads as follows:

"Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the applicant has been filed with the Commission within six months from such date on which the final decision was taken."

AD 63 Article 4 of the quoted Law of the Federation is contrary to Article 13 of Annex 7 which reads as follows:

" The Parties, after notification to the Commission and in coordination with UNHCR and other international and nongovernmental organizations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require."

AD 73 In this paragraph the Chamber finds that the respondent Party has conceded that "problems" in the judicial system of the Herzeg-Bosnian Canton regarding "efficiency and independence" do exist. In the course of this case the Agent of the Federation before the Chamber was Assistant to the Minister of Justice of the Federation BiH and, serving in this office, she knows or should know the facts which the Chamber wanted to be informed of. Had the Agent of the Federation presented these facts to the Chamber, the Chamber's conclusion in this decision would surely have been different. The statement of the Agent of the Federation at the public hearing, to the effect that the Municipal Court and the Cantonal Court are inefficient and partial was strange. At the public hearing held on the same day in Case No. CH/97/67, *Zahirović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, after the Agent had been asked by a member of the Chamber about the functioning of the municipal and cantonal courts in Livno, no such conclusion could be made. The question which a member of the Chamber addressed to the Agent of the Federation, who was persistent in pointing out the length of the proceedings before the Court in Livno, was: "You probably know how many judges are engaged at the Municipal Court in Livno, and how big the workload of the Court was, i.e. how many cases were pending before the Court in Livno in 1997 and in 1998 ?" The Agent of the Federation replied: "I am not in a position to know how many judges there are at the Municipal Court in Livno and I do not know the number of cases pending before the Court either."

To the next statement, made by the member of the Chamber ("In your submission to the Chamber of

14 December 1998, at the end of the first page, you stated that because of the behaviour of the Court of Canton 10 the applicant was unable to exhaust a remedy...") the Agent of the Federation answered as follows: "In my opinion, no responsibility falls on the Court of the Canton 10 if the applicant has not appealed against the decision by which the complaint was rejected". It is the Ministry of Justice which is responsible for the functioning of courts; the Agent of the Federation did not present to the Chamber a single fact concerning this Ministry from her Report on the functioning of the courts in the Federation and the Municipal Court in Livno.

AD 77 As appears from the statement of the former Mayor of Livno, Mr. Mate Franjičević, made at the Chamber's public hearing in Case No. CH/97/67 *Zahirović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, the political Party of Democratic Action (SDA), composed almost exclusively of Bosniaks, has - pursuant to the results of the elections carried out by the OSCE - the right to take part in the municipal administration but does not wish to participate in the executive and judicial authorities. It participates only in the work of the Municipal Assembly of Livno.

AD 79 The applicant did not allege a single fact, neither in her application nor at the public hearing, on the basis of which it would be possible to conclude that she has been discriminated against. She never mentioned, let alone explained that an action had a DISCRIMINATORY EFFECT against her.

VIII. THE NAME "*HERCEG-BOSANSKA ŽUPANIJA*" (HERZEG-BOSNA CANTON)

The Federation of Bosnia and Herzegovina is composed of ten cantons *(županija)*. Each of them has its own Constitution which, among other things, provides the name of the canton. One of these cantons is named Herzeg-Bosna Canton. The Constitutional Court of the Federation BiH found that this name of the Canton is not IN ACCORDANCE with the Constitution of the Federation.

Pursuant to chapter IV.C (3) Article 10 (2)(b) of the Constitution of the Federation, the Constitutional Court of the Federation indeed has competence to establish whether the Constitution of a Canton is IN ACCORDANCE with the Constitution of the Federation. However, the Constitution of the Federation does not provide jurisdiction for the Constitutional Court to ANNUL the Constitution of a Canton. Accordingly, in this case the Constitutional Court of the Federation finds the disputed provisions INCONSISTENT with the Constitution of the Federation. Thus, the Constitution of the Federation has prescribed that the Constitutional Court of the Federation can not be a CO-PRODUCER of the Constitution of the Canton but only a SUPERVISOR thereof. The Constitution of the Federation does not provide that the Constitutional Court should be a RESERVE LEGISLATOR of the Constitution of the Canton, as it is said in the science of law.

For the above reasons, on the aforementioned legal issue, the Human Rights Chamber for Bosnia and Herzegovina has no legal basis, pursuant to Annex 6 of the Dayton Agreement, to use in this decision "CANTON 10" as the name of the canton.

IX. FINAL CONCLUSION

1. Based on all what was displayed in the decision on the admissibility and merits, we herewith add this separate dissenting opinion with the Chamber's decision.

2. The applicant has the right to return to her home which is in joint ownership, but not through the machinery of Annex 6 but through that of Annex 7 to the Dayton Agreement, by which, at the same time, a shelter for the J. family, who is occupying the applicant's house, will be ensured. This final conclusion, made by both of us, is in our opinion entirely in accordance with Strasbourg case law, i.e. the case of *Tyrer v. the United Kingdom,* where the Court emphasised that the Convention is a dynamic instrument which has to be interpreted in light of the current conditions (judgement of 1978, Series A No. 26, p. 15-16, paragraph 31). This means that the Chamber should have taken into account the complex social and economic conditions in Bosnia and Herzegovina, as set out in the INTRODUCTION (I) to this separate opinion.

(signed)

Vlatko MARKOTIĆ

(signed)

Želimir JUKA

We join this separate dissenting opinion:

(signed)

Prof. Dr. Vitomir POPOVIĆ

(signed)

Miodrag PAJIĆ

DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 10 September 1999

CASE No. CH/98/764

Milan KALIK

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 July 1999 with the following members present:

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

Mr. Anders MÅNSSON, 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. He occupies a house located at Srđe Slopogleđe 40, Banja Luka, Republika Srpska ("the house"). On 11 August 1997, the applicant entered into an agreement with the owner of the house, in which he had lived since 1993. This agreement, in the form of an authorisation, entitles the applicant to occupy the house until the agreement is terminated. In addition, the agreement will terminate if a law is passed by the State with such effect. The agreement was certified on the same day by the Municipality of (Bosanski) Petrovac in the Federation of Bosnia and Herzegovina. On 13 July 1998 officials of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") came to the house with members of the police and attempted to evict the applicant and his family. This attempt was unsuccessful and the officials said they would return to evict the applicant again. The applicant still occupies the house.

2. The case raises issues principally under Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 13 July 1998 and registered on the same day. The applicant requested that the Chamber order the respondent Party as a provisional measure to take all necessary steps to prevent the applicant's eviction from the house.

4. On 14 July 1998, the President of the Chamber ordered, pursuant to Rule 36(2), the respondent Party to refrain from evicting the applicant from the house. The order stated that it would remain in force until the Chamber has given its final decision in the case, unless it was withdrawn by the Chamber before then.

5. On 4 August 1998 the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure, to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 4 September 1998.

6. No observations were received from the respondent Party.

7. On 22 January 1999, the applicant was requested to submit a written statement and any claim for compensation or other relief which he wished to make. This statement, which did not contain a claim for compensation, was received by the Chamber on 12 February 1999.

8. On 23 February 1999, the applicant's written statement was transmitted to the Agent of the respondent Party for information.

9. The First Panel deliberated upon the admissibility and merits of the application and adopted its decision on 7 July 1999.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

10. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

11. The applicant, together with his family, occupies a house located at Srđe Slopogleđe 40, Banja Luka, Republika Srpska. On 11 August 1997, he entered into an agreement with the owner of the house. The main terms of this agreement, which is in the form of an authorisation, are that the applicant is required to maintain the house in good condition. The authorisation is valid until

terminated or until such time as a law is passed by the State which renders it invalid. The agreement was certified on the same day by the Municipality of (Bosanski) Petrovac in the Federation of Bosnia and Herzegovina.

12. On 13 July 1998 officials from the Commission came to the house with members of the police and attempted to evict him. They did not give him a copy of any decision ordering his eviction, even after being specifically requested to do so. The eviction was not successful. The officials stated that they would return later to evict the applicant. The applicant still occupies the house.

B. Relevant legislation

1. The Law on the Use of Abandoned Property

13. The Law on the Use of Abandoned Property ("Official Herald of the Republika Srpska", "OG RS", No. 3/96) ("the Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the Official Herald on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the Law, insofar as they are relevant to the present case, are summarised below.

14. Articles 2 and 11 of the Law define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the record of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

15. Article 3 of the Law states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

16. Article 10 of the Law states that if a person enters into possession of abandoned property without a decision of the appropriate commission, that commission shall issue a decision ordering the person to leave the property concerned. An appeal may be lodged to the Ministry by the recipient within three days of its receipt. The lodging of an appeal to the Ministry does not suspend the execution of the decision.

17. Article 15 of the Law reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
>
> 1. to the families of killed soldiers
> 2. war invalids with injuries in categories I-V
> 3. war invalids with injuries in categories V-X
> 4. qualified workers of whom there is a lack in the Republika Srpska."

18. Article 15A of the Law (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

19. Article 49 of the Law reads as follows:

> "Lease agreements as well as agreements relating to the use and protection of abandoned apartments and other property entered into after 6 April 1992 between an owner or user who has left the territory of the Republika Srpska and other persons are null and void."

20. Article 53 of the Law reads as follows:

> "The owners or users of real and other property situated in the Republika Srpska who left the territory of the Republika Srpska after 6 April 1992 cannot deal with their property through an authorised person."
>
> Contracts or agreements referred to in the above paragraph relating to the disposal of real and other property concluded after the entry into force of this Law are invalid. In such situations, certification of the signatures of parties to such a contract may not be carried out by the responsible authorities.
>
> (...)"

2. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

21. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property (OG RS No. 38/98) establishes a detailed framework for persons to regain possession of property considered to be abandoned under the Law. It puts the Law on the Use of Abandoned Property out of force.

IV. COMPLAINTS

22. The applicant claims that his right to a fair hearing in the determination of his civil rights and obligations, as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") has been violated. He also claims that his rights as protected by Article 8 of the Convention (right to respect for, *inter alia*, home) and by Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions) have been violated.

V. SUBMISSIONS OF THE PARTIES

23. The respondent Party has not made any submissions regarding the application.

24. The applicant maintains his complaint and requests that he be allowed to remain in the house.

VI. OPINION OF THE CHAMBER

A. Admissibility

25. 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.

26. 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. The Chamber notes that the respondent Party has not suggested that there is any "effective remedy" available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

27. As the Chamber noted in the case of *Onić v. The Federation of Bosnia and Herzegovina* (Case No. CH/97/58, decision of 12 January 1999, paragraph 38), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11) the remedies available to an applicant must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. In addition, when applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

28. The Chamber notes that the applicant has never received any decision of the Commission or other authority concerning his occupation of the house. He was only orally informed that he would be evicted.

29. The Chamber notes that the Law provides for appeals to be made against decisions declaring persons to be illegal occupants of property (see paragraph 16 above). However, in this case the applicant never received any such decision. Accordingly, he could not avail of this right of appeal. Accordingly, the Chamber does not consider that there is any domestic remedy available to the applicant which he should be required to exhaust.

30. The Chamber does not consider that any of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

31. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

32. The applicant claimed to be a victim of a violation of his right to respect for his home as guaranteed by Article 8 of the Agreement. Article 8 reads as follows:

> "1. Everyone has the right to respect for ... his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

33. The Chamber notes that the applicant has lived in the house since 1993. It is therefore clear that it is to be considered as his "home" for the purposes of Article 8 of the Convention. The Chamber has already held that the threatened eviction of a person from their home constitutes an "interference by a public authority" with the exercise of the right to respect for home (*Blagojević v. The Republika Srpska*, Case No. CH/98/645, Decision of 11 June 1999, paragraph 49). The attempts of the Commission to evict the applicant from the house therefore constitute an interference by the respondent Party with the applicant's right to respect for his home.

34. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and "was necessary in a democratic society" (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

35. The Chamber notes that Article 2 of the Law requires a property to be entered into the minutes of abandoned property before it can be allocated to a person within the categories set out in Article 15. The respondent Party has not provided any evidence that any such entry was made in respect of the house in the present case. Nor is there any other indication available to the Chamber that such an entry was made. In addition, the applicant was never given any decision of the Commission issued under Article 10 of the Law. Accordingly, the attempts of the Commission to evict the applicant from the house cannot be considered to have been "in accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention.

36. Accordingly, the Chamber considers that there has been a violation of the applicant's rights as guaranteed by Article 8 of the Convention.

2. Articles 6 and 13 of, and Article 1 of Protocol No. 1 to, the Convention

37. In view of its findings under Article 8 of the Convention, the Chamber does not consider it necessary to examine the case under Articles 6 and 13 of, and Article 1 of Protocol No. 1 to, the Convention.

VII. REMEDIES

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

39. The Chamber notes that in accordance with its order for proceedings in the case the applicant was afforded the possibility of claiming compensation, but did not do so. He requests that he be allowed to remain in the house.

40. The Chamber notes that the Law has been put out of force by the adoption of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. This would appear to remove the threat to the applicant that he would be evicted, although in view of the actions of the Commission previously, it cannot be ruled out that further illegal attempts to evict him might be made.

41. The Chamber therefore considers it appropriate to order the respondent Party to take all necessary steps to ensure that the Commission will take no further steps to disturb the applicant in his possession of his house.

VIII. CONCLUSION

42. For the above reasons, the Chamber decides:

1. unanimously, to declare the application admissible;

2. unanimously, that the attempts of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka to evict the applicant from the house concerned in the application constitute a violation of his right to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. unanimously, that it is not necessary to rule on the application under Articles 6 and 13 of, and Article 1 of Protocol No. 1 to, the Convention;

4. unanimously, to order the Republika Srpska to ensure that the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka allows the applicant to enjoy undisturbed occupancy of the house concerned in the application in accordance with the terms of his agreement; and

5. unanimously, to order the Republika Srpska to report to it by 10 December 1999 on the steps taken by it to comply with the above order.

(signed) Anders MÅNSSON Registrar of the Chamber	(signed) Michèle PICARD President of the First Panel

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 6 July 2000)

Case no. CH/98/774

Sead KARAMEHMEDOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 June 2000 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. Anders MÅNSSON, 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 Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The application deals with the attempts of the applicant to regain possession of a part of an apartment in Sarajevo, over which he previously held an occupancy right. It raises issues under Articles 6 and 8 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 15 July 1998 and registered on the same day. The applicant is represented by Mr. Seid Hadžiselimović, a lawyer practising in Sarajevo.

3. At the outset, the applicant requested that the Chamber issue a provisional measure to enable him to swiftly move into the apartment in question and in the meantime to secure his accommodation needs until a final solution to his housing situation is found. The Chamber rejected this request on 12 November 1998.

4. On 29 January 1999 the application was transmitted to the Federation of Bosnia and Herzegovina under Article 6 paragraph 1 of the Convention. On the same day, the applicant was requested to provide further information regarding the domestic proceedings in the case. The applicant replied on 18 February 1999 and the respondent Party on 26 March 1999.

5. Further submissions were received from the applicant on 14 October 1998, on 29 April, 4 May, 25 June, 2 and 19 July, and 19 October 1999, and on 7 February and 15 May 2000.

6. The Chamber considered the application on 12 November 1998 and on 13 May and 7 June 2000. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

7. The applicant held an occupancy right over an apartment at Ulica Džemala Bijedića 242 in Ilidža. After his divorce, his ex-wife obtained the occupancy right over the apartment by virtue of a court decision of 2 October 1991. The applicant had the right to use part of the premises until other accommodation could be found for him according to Article 20 paragraph 1 in conjunction with Article 7 paragraph 3 of the Law on Housing Relations (see paragraph 15 below).

8. On 18 September 1995 the applicant and his ex-wife had to leave the apartment due to the hostilities in the area. After the conclusion of the General Framework Agreement and the integration of Ilidža into the territory of the Federation of Bosnia and Herzegovina the applicant's ex-wife returned to the apartment, but forcibly prevented the applicant from moving into it thereafter.

9. On 26 June 1996 the applicant initiated proceedings before the Municipal Court II in Sarajevo against his ex-wife with a view to repossess the part of the apartment in which he had already lived before the war. On 8 April 1997 the court decided in favour of the applicant and ordered his ex-wife to allow him to use the part in question until his housing needs were otherwise met.

10. On 19 June 1997 the applicant's ex-wife appealed against the judgment of the Municipal Court to the Cantonal Court in Sarajevo. On 6 October 1997 the Cantonal Court quashed the appealed judgment as being seriously flawed. The Cantonal Court reasoned that the Municipal Court had not correctly established the facts and had misapplied the law and, accordingly, ordered that the case be returned to the latter court for reconsideration.

11. According to the applicant, at least 12 Municipal Court hearings were scheduled, but no decision was taken. Apparently, the hearings were either not attended by the defendant or they were postponed due to "lack of evidence". The proceedings before the Municipal Court are still pending to date.

B. Relevant domestic law

12. Article 10 of the Law on Civil Procedure (Official Gazette of the Federation of Bosnia and Herzegovina no. 42/98) provides:

> "The court is obliged to ensure that the proceedings are conducted without delay ... and not to allow any abuse of the rights attributed to the parties in the proceedings."

13. Article 105 paragraph 1 of the Law on Civil Procedure reads:

> "The court may postpone a hearing if it is necessary in order to obtain evidence or for other justified reasons."

14. Article 20 paragraph 1 of the Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 14/84, 12/87 and 36/89) provides:

> "The divorced party, whose occupancy right ceased by virtue of a court decision, is obliged to leave the apartment ... as soon as his or her accommodation is secured otherwise."

15. Article 7 paragraph 3 of the Law on Housing Relation provides:

> "A person who requests the dislodging is obliged to secure an appropriate apartment or other alternative accomodation."

IV. COMPLAINTS

16. The applicant complains that the court proceedings in his case have been pending for an unreasonable time, and that the lawyer of his ex-wife has influenced the judges at the Municipal and Cantonal Court to act in favour of his client. The applicant also states that he is in a desperate position since he has no income and is in a bad state of health. He claims that he is not able to afford his current alternative accommodation. The application raises issues under Articles 6 and 8 of the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

17. The Federation of Bosnia and Herzegovina states that it is not able to recognise what act could have violated any rights of the applicant as provided in the Convention. It is also argued that the application is inadmissible because domestic remedies have not been exhausted. As to the merits, the Federation denies that the proceedings in the applicant's case have yet exceeded a reasonable length of time, asserting that in housing and property law matters a time of up to six years could be considered as reasonable for a court to determine a dispute such as the one in the present case.

B. The applicant

18. The applicant alleges that the Municipal Court has postponed various hearings without good cause, amongst other things due to the failure of the defendant to be present. He states that his case is not complex in nature and that the decisive facts are not in dispute. Moreover, the applicant asserts that the defendant's strategy is to stall a decision as long as possible and that the court tolerates it, contrary to the applicable provisions of the Law on Civil Procedure (see paragraph 12 above).

VI. OPINION OF THE CHAMBER

A. Admissibility

19. Before considering the case on the merits 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 shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

20. The Federation argues that the applicant has not exhausted domestic remedies since there is not yet a final decision in his case.

21. The Chamber notes that the applicant claims that the determination of his dispute was not conducted within a reasonable time, whereas the respondent Party has argued that domestic remedies have not yet been exhausted. As it has not been demonstrated that there exists a possibility to remedy this complaint, the Federation's arguments must be rejected.

22. The Chamber concludes that there is no effective remedy at disposal for the purposes of Article VIII(2)(a) of the Agreement that the applicant could be required to exhaust.

23. As no other ground for declaring the application inadmissible has been established, the Chamber finds that it is admissible.

B. Merits

24. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation 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

25. The Chamber will next consider the allegation that there has been a violation of Article 6 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time and by an impartial tribunal. The relevant parts of Article 6 paragraph 1 provide as follows:

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

(a) The length of the proceedings

26. The Chamber recalls that the applicant instituted civil proceedings on 26 June 1996 with a view to regain possession of part of the apartment in question. A judgment was issued by the Municipal Court on 8 April 1997. However, it was quashed by the Cantonal Court on 6 October 1997. Since that date, the proceedings have been pending before the Municipal Court, during which a great number of hearings have been scheduled, rescheduled and postponed.

27. The Chamber considers that the period of time to be considered started on 26 June 1996. As of June 2000, the proceedings have lasted for four years.

28. When assessing the reasonableness of the length of proceedings for the purpose of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case, the conduct of the applicant and the authorities and the matter at stake for the applicant (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

29. The issue underlying the present application is whether the applicant is entitled to use part of an apartment until his housing needs are otherwise met. The Chamber notes that the same issue was already decided by a court judgment of 2 October 1991. It is true that the Municipal Court has to

take into account the events occuring since that date and of their potential relevance to the case. Nonetheless, the Chamber does not consider it to be a case so complex in nature as to require the Municipal Court more than two and a half years to determine it.

30. The Chamber notes that there is no indication that the length of the proceedings can be attributed to the conduct of the applicant, nor has the respondent Party made an allegation to that effect.

31. The Chamber also considers that a swift determination of the case by the Municipal Court would have been of great importance to the applicant, who has lived at different places for the time of the pending proceedings and whose health is apparently in a bad condition. Having regard to the above, in particular the fact that the domestic court proceedings have been pending for four years, the Chamber finds that there has been a violation of the applicant's right to a hearing within a reasonable time within the meaning of Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

(b) The impartiality of the domestic courts

32. Concerning the applicant's particular allegation of a "special relationship" between the lawyer of the applicant's ex-wife and some of the judges of the courts of first and second instance, the Chamber finds that the applicant has not presented sufficient evidence to support that allegation. The Chamber does therefore not find it necessary to consider this question any further.

2. Article 8 of the Convention

33. The Chamber will next examine, *proprio motu*, if there has also been a violation of Article 8 of the Convention in that the applicant was prevented to enter his home because the proceedings in his case have not been determined within a reasonable time. The relevant parts of Article 8 of the Convention read as follows:

> "1. Everyone has the right to respect for ..., his home, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law
> ..."

34. The Chamber notes that the applicant has lived in the apartment in question until the dissolution of his marriage in 1991, and thereafter until such time as he was forced to leave. The Chamber has previously held that links that persons in similar situations as the applicant in the present case retain to their dwellings are sufficient for them to be considered as their "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/659 et al., *Pletilić and others*, decision on admissibility and merits delivered on 10 September 1999, paragraphs 165-166, Decisions August-December 1999). It is therefore clear that the apartment in question is to be considered as the applicant's home for the purposes of Article 8 of the Convention. The fact that the occupancy right over the apartment was conferred on his ex-wife by the decision of 2 October 1991 does not alter this finding since the applicant was entitled to continue living there by virtue of the same decision.

35. The Chamber notes that the applicant and his ex-wife were both forced to leave the apartment because of fear for their safety as a result of the hostilities. After the end of the war, the applicant's ex-wife returned to the apartment and prevented the applicant from entering it. Although this action clearly cannot be attributed to the respondent Party, the Chamber finds that there has been an interference with the applicant's right to respect for his home in that the court proceedings instituted by him on 26 June 1996 have not lead to a determination of his claim within a reasonalble time (see above).

36. The European Court of Human Rights has previously held that there can be a positive obligation on a state to safeguard the enjoyment of this right towards an individual (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, paragraph 32). Taking this into account, the Chamber finds that the respondent Party is under an obligation to ensure that the civil proceedings in

the applicant's case are conducted with the necessary speed in order to effectively protect his right to respect for his home. The Chamber has already found that the proceedings initiated by the applicant have not been carried out within a reasonable time within the meaning of Article 6 of the Convention. Given that also the Law on Civil Procedure calls for a speedy resolution of the dispute, the Chamber cannot find that the interference was "in accordance with the law". It follows that it has not been justified under the terms of paragraph 2 of Article 8 of the Convention.

37. To conclude, the Chamber is of the opinion that there has also been a violation of the right of the applicant to respect for his home as guaranteed by Article 8 of the Convention. This violation is ongoing as the applicant's claim for repossession has been left undecided for an unreasonable period of time. The Federation of Bosnia and Herzegovina is responsible for this violation.

VII. REMEDIES

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

39. In the present case, the Chamber finds it appropriate to order the respondent Party to take all necessary steps in order to ensure that the applicant's case, currently pending before the Municipal Court in Sarajevo, is determined by that court in an expeditious manner.

VIII. CONCLUSIONS

40. For these reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the failure of the Municipal Court to decide on the applicant's claim constitutes a violation of the applicant's right to a 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;

3. by 5 votes to 2, that the failure of the Municipal Court to decide on the applicant's claim within a reasonable time constitutes a violation of the applicant's right to respect for his home within the meaning of Article 8 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the Municipal Court in Sarajevo determines the applicant's pending case in an expeditious manner; and

5. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber, within one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 October 1999)

Case no. CH/98/777

Emadin PLETILIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 September 1999 with the following members present:

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

Mr. Anders MÅNSSON, 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 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 Bosniak origin. He is owner of real property in Gradiška, Republika Srpska which he was forced to leave during the war. The property is currently occupied by two families of refugees and displaced persons of Serb origin. The applicant has returned to Gradiška together with his wife on an unspecified date.

2. The case concerns his attempts before various authorities of the Republika Srpska to regain possession of his property. The applicant has taken the following steps to this end: applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property ("the Commission") in Gradiška and the Ministry for Refugees and Displaced Persons ("the Ministry") under the Law on the Use of Abandoned Property which entered into force in February 1996 ("the old Law", see paragraphs 27-35 below); initiating proceedings before the Municipal Court in Gradiška ("the Court"), and applying to the Ministry under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property which entered into force in December 1998 ("the new Law", see paragraphs 36-50 below).

3. The case raises issues principally under Articles 6 and 8 of the European Convention on Human Rights, Article 1 of Protocol No. 1 to the Convention and Article II(2)(b) of the Agreement.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 16 July 1998 and registered on the same day.

5. On 10 September 1998 the First Panel of the Chamber considered the case and decided to ask the applicant for further information in relation to the admissibility and merits of his application. The information was received on 5 October 1998.

6. On 18 December 1998 the First Panel of the Chamber decided to transmit the case to the respondent Party pursuant to Rule 49(3)(b) for its observations on their admissibility and merits. On 23 December 1998 the application was so transmitted. The respondent Party's observations were due by 23 February 1999. No observations have been received.

7. On 19 March 1999 the applicant's request for compensation and other relief was received. On 23 March 1999 the request received by the Chamber was sent to the respondent Party for its further observations. No observations were received.

8. On 19 April 1999 the applicant submitted additional information which was transmitted to the respondent Party on 22 April 1999.

9. The First Panel deliberated on the admissibility and merits of the application on 9 September 1999 and adopted the present decision.

III. FACTS

A. Facts of the case

10. The applicant is the owner of land in Gradiška registered under parcel number 1227/8 as evidenced by the extract number 1093/3 from the Land Registry. A house is situated on the land. In 1993, the applicant and his wife left Gradiška after having arranged with one of the families now living in the house to look after it. They returned to Gradiška after the war ended. The applicant's property is occupied by Bosnian Serb displaced persons and refugees of Serb origin from Croatia. The applicant has obtained an identity card ("*Lična karta"*) issued by the authorities of the Republika Srpska and it constitutes proof of permanent residence in that Entity.

11. On 2 April 1998 and 23 April 1998 the applicant applied to the Commission to regain

possession of his property. He did not receive any reply. On 23 June 1998 he appealed to the Ministry, but did not receive any decision.

12. On 13 July 1999 the applicant initiated proceedings against the current occupants of the property before the Court in Gradiška ("the court"), seeking their eviction. In December 1998, the court rejected the proceedings on the ground that it was incompetent to deal with the matter.

13. In January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 5 January 1999 it issued a decision entitling him to re-enter the property. The date set for such re-entry was 6 April 1999. On 5 April 1999 the applicant filed a request to the Commission for forcible execution of the decision of 5 January 1999. The applicant did not succeed in regaining possession of his property.

B. Relevant legal provisions

1. Constitution of Bosnia and Herzegovina

14. Article II of the Constitution of Bosnia and Herzegovina ("the BH Constitution"), entitled "Human Rights and Fundamental Freedoms", sets out the mechanism for the protection of human rights and fundamental freedoms within Bosnia and Herzegovina.

15. Article II(1) of the BH Constitution, entitled "Human Rights", reads as follows:

> "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. ...."

16. Article II(2) of the BH Constitution, entitled "International Standards", reads as follows:

> "The rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

17. Article II(4) of the BH Constitution, entitled "Non-Discrimination", reads as follows:

> "The enjoyment of the rights and freedoms (guaranteed by the BH Constitution) shall be secured to all persons in Bosnia and Herzegovina 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."

18. Article II(5) of the BH Constitution, entitled "Refugees and Displaced Persons", reads as follows:

> "All refugees and displaced persons have the right freely to return to their homes of origin. ...."

19. Article II(6) of the BH Constitution, entitled "Implementation", reads as follows:

> "Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above."

2. Constitution of the Republika Srpska

20. Title II of the Constitution of the Republika Srpska ("the RS Constitution") is titled "Human Rights and Freedoms".

21. Article 10 of the RS Constitution reads as follows:

> "Citizens of the Republic are equal in the enjoyment of rights, freedoms and duties, they are

equal before the law and shall enjoy legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status or other personal attributes."

22. Article 16 of the RS Constitution reads as follows:

"Everyone has the right to equal protection of their rights before the courts and other state organs and organisations.

Everyone has the right to appeal or otherwise institute legal proceedings against a decision concerning his rights or legal interests."

23. Article 17 of the RS Constitution reads as follows:

"Everyone has the right of redress for loss caused by illegal or unjust actions by official persons or state organs or institutions acting in an official capacity. …."

24. Article 56 of the RS Constitution reads as follows:

"In accordance with the law, rights of ownership may be limited or expropriated, subject to payment of fair compensation."

25. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

"During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

26. Article 121 of the RS Constitution reads as follows:

"The judicial function is performed by the Courts. The Courts are independent and decide upon the basis of the Constitution and laws.

The Courts protect human rights and freedoms, established rights and interests of legal entities and legality."

3. The Law on the Use of Abandoned Property

27. The Law on the Use of Abandoned Property (Official Gazette of Republika Srpska – hereinafter "OG RS" – no. 3/96; "the old Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the old Law, insofar as they are relevant to the present cases, are summarised below.

28. Articles 2 and 11 define "abandoned property" as real and personal property which as been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

29. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

30. Article 15 reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
>
> - to the families of killed soldiers
> - war invalids with injuries in categories I-V
> - war invalids with injuries in categories V-X
> - qualified workers of whom there is a lack in the Republika Srpska."

31. Article 15A (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

32. Articles 39-42 set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

33. Article 39 reads as follows:

> "The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia."

34. Article 40 reads as follows:

> "In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.
>
> If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:
>
> - within 30 days from the day the person who was the occupier of the property returns to his property or apartment
> - at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation. (....)"

35. Article 42 reads as follows:

> "The provisions of Articles 39-41 of this law shall be applied on the basis of reciprocity."

4. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

36. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; "the new Law") establishes a detailed framework for persons to regain possession of property considered to be abandoned.

37. The new Law puts the old Law out of force.

38. Article 2 states that all decisions made under the old Law granting temporary or permanent

rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new Law.

39. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991 or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned.

40. Article 6 concerns the arrangements to be made for persons who are required to vacate property in order to allow the previous owner, possessor or user to return. If such a person cannot, or does not wish to, return to his or her prewar home, and has not been provided with alternative temporary accommodation, the relevant body of the Ministry (i.e. the local Commission) shall provide that person with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

41. If a person who temporarily occupies a property is to be evicted from it, and provides evidence that he or she applied to regain possession of his or her pre-war home, that person cannot be evicted until he or she can regain possession or freely dispose of his or her own home. An exception to this prohibition on eviction exists where the temporary occupant is provided with alternative accommodation within a period of one year of providing evidence of an application to regain possession of his or her own pre-war home.

42. If the person who is required to vacate the property has had his or her request to return to his or her property resolved, any failure of the responsible authority to provide alternative accommodation for such a person cannot delay the return of the owner, possessor or user of such property.

43. If a temporary occupier of abandoned property occupies that property without a legal basis, the Ministry is not obliged to provide him or her with alternative accommodation.

44. Article 7 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Article 8 states that such claims may be filed with the responsible body of the Ministry (i.e. the local Commission). This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

45. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

46. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Procedures (see paragraphs 51-56 below) and treated as an expedited procedure.

47. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

48. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission"). If this occurs, all other proceedings regarding the property, including those under Article 11, shall be stayed pending the final decision of the Annex 7 Commission. Any decision of the Annex 7 Commission shall be enforced by the appropriate authorities of the Republika Srpska.

49. Article 27 states that a decision made under Article 11 may be appealed to the Ministry within 15 days of receipt of such decision.

50. Article 29 of the law requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS 1/99 and entered into force on 21 January 1999. Article 6 of this instruction states that a person who has submitted a claim under the previously applicable regulations (i.e. under the old Law) and such claim has not yet been properly resolved should submit a new claim under the new Law. However, if they do not do so, such previous claim shall constitute a valid claim under the new Law. If such previously submitted claim does not meet the requirements of the new Law, the applicant is to be requested to submit the additional information as prescribed by the new Law.

5. The Law on General Administrative Procedures

51. The Law on General Administrative Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

52. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on General Administrative Procedures.

53. Chapter XVII (Articles 270 – 288) is concerned with the procedure for enforcement of rulings and conclusions.

54. Article 270 states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of any appeal expires without any such appeal having been submitted.

55. Article 274 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

56. Article 275 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. of reinstatement to property) is to be carried out by an administrative procedure.

6. The Law on Administrative Disputes

57. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS no. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25(1), if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued within 7 days of the lodging of such a reminder, the applicant may initiate an administrative dispute.

7. The Law on Regular Courts

58. The Law on Regular Courts (OG RS nos. 22/96 and 25/96) regulates the court system in the Republika Srpska.

59. Article 2 of the law reads as follows:

> "Courts shall protect liberties and rights of citizens, lawfully established rights and interests of legal subjects and shall safeguard constitutionality and legality."

60. Article 17 of the law reads as follows:

> "Court of First Instance shall be competent:
> (…)
> 2) in civil suits, to try at first instance;
> a) civil legal disputes,
> b) disputes in respect of disturbance of property
> (….)."

IV. COMPLAINTS

61. The applicant complains that his right to respect for his home as guaranteed by Article 8 of the Convention has been violated. In addition, he complains that his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, has been violated. He further alleges violations of his rights to an effective remedy, as guaranteed by Article 13 of the Convention, and to freedom from discrimination, as guaranteed by Article 14 of the Convention. He also complains of violations of Annexes 6 and 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Articles 39 to 42 of the Law on the Use of Abandoned Property.

V. SUBMISSIONS OF THE PARTIES

62. The respondent Party did not submit any observations. The applicant maintains his complaints.

VI. OPINION OF THE CHAMBER

A. Admissibility

63. 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.

64. 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.

65. The Chamber notes that the applicant unsuccessfully applied to the relevant organ under the old Law to regain possession of his properties. Accordingly, he has sought to avail himself of this remedy.

66. In *Onić* (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January–July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but 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 … concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

67. The Chamber notes that the applicant also initiated proceedings before the Court in Gradiška against the current occupants of their properties, seeking to regain possession of those properties. The Court declined to consider the case on the ground that it did not have jurisdiction over abandoned property.

68. The Chamber considers that the fact that the Court has declined jurisdiction shows that the initiation, by the present applicant, of court proceedings seeking to regain possession of property did not have any prospect of success either. It cannot therefore be considered to be an effective remedy which the applicant should be required to exhaust.

69. The Chamber notes that the applicant has applied under the new Law to regain possession of his property. He has received a decision from the Commission, entitling him to regain possession of his property. The time-limits for such regaining of possession was, however, not adhered to.

70. As the Chamber noted in its decision in *Onić* (*sup. cit.*), in the context of its examination of an analogous law adopted in the Federation of Bosnia and Herzegovina, and in its decision in *Pletilić and others* (case no. CH/ 98/659 *et al.*, decision on admissibility and merits delivered on 10 September 1999, paragraphs 150-152), a remedy such as that provided for by the new Law could in principle qualify as an effective one. It is not, however, for the Chamber to examine the effectiveness of the new Law in general, in isolation from the manner in which it is being applied by the authorities in the context of the cases before the Chamber.

71. In these circumstances, the Chamber finds that the applicant cannot be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy in this context provided for in domestic law.

B. Merits

72. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

73. In his application to the Chamber, the applicant claimed to be a victim of a violation of Article 8 of the Convention which reads, insofar as relevant, as follows:

> "Everyone has the right to respect for ..., his home ...
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

74. The Chamber notes that the applicant had lived in the house situated on his property and used it as his home until such times as he was forced to leave. The Chamber has previously held that links that persons in similar situations as the applicant in the present case retained to his dwellings were sufficient for them to be considered to be his "home" within the meaning of Article 8 of the Convention (see, e.g., the aforementioned *Pletilić and others* decision, paragraphs 165-166, and case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraph 3, Decisions and Reports 1998).

75. It is therefore clear that the property is to be considered as the applicant's "home" for the purposes of Article 8 of the Convention.

76. The Chamber notes that the applicant was forced to leave his home, because of fearing for his safety as a result of the hostilities. The property was then occupied by refugees or displaced persons of Serb origin. The refugees or displaced persons occupied the property concerned in accordance with decisions of the Commission issued in accordance with the old Law. Therefore, the respondent Party was responsible for the interference with the rights of the applicant to respect for his home. The interference is ongoing, as the applicant still has not succeeded in regaining possession of his property.

77. In order to examine whether this interference has been justified under the terms of paragraph

2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

78. The property was considered to be abandoned in accordance with the old Law (see paragraphs 27-35 above). Moreover the applicant tried to regain possession of his property in accordance with Articles 39 and 42 of the old Law. This law sought to provide for a regime for the administration of abandoned property in the Republika Srpska. In accordance with the provisions of this law, the property was occupied by refugees and displaced persons of Serb origin. This fact is certified by the Commission's decision of 5 January 1999.

79. The Chamber must decide whether the old Law can be considered to be a "law" in the context of Article 8 paragraph 2 of the Convention.

80. The Chamber has previously held that the term "law" is related to certain qualitative criteria of a norm, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (see the aforementioned *Kevešević* decision, *loc. cit.*).

81. In the above-mentioned *Kevešević* case, the Chamber held that the concept of the rule of law contains the following three elements: first, the law must be adequately accessible: a citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee with reasonable certainty the consequences of his actions. Thirdly, a law must provide safeguards against abuse.

82. The Chamber notes that the procedure for regaining of possession was set forth in Articles 39-42 of the old Law (see paragraphs 33-35 above). The precise effect of these Articles is unclear. For example, Article 39 allows for the regaining of possession of property within the context of an overall settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia. The Article does not specify what the terms of any such settlement are to be and gives no guidance as to what, if any, procedures are to be followed prior to the conclusion of any such settlement. Article 40 is drafted in such a way as to render it practically impossible for an owner of property who is a refugee to secure possession of it under the Law. Article 42 of the old Law states that Articles 37-41 are to be applied on the basis of reciprocity, without any explanation of how this is to be applied in practical terms. It is accordingly clear that the old Law did not enable a person seeking to regain possession of his or her property to know under what conditions he or she was entitled to regain possession or to establish what actions he or she must take to do so. The law also did not provide any safeguards against possible abuse, but was in itself a source of arbitrariness and abuse.

83. In conclusion, as already established in its decision in *Pletilić and others (sup. cit.*), the Chamber finds that the legal provisions in question did not meet the standards required of a "law" under Article 8 paragraph 2 of the Convention. This is in itself sufficient for finding that there has been a violation on these grounds of the applicant's rights as guaranteed by that provision.

84. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

85. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of the applicant to respect for his home as guaranteed by Article 8 of the Convention. This violation is ongoing, since the applicant has not yet regained possession of his property, despite the fact that the applicant has sought to regain this possession under the new Law.

86. The Chamber notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, at the present time there is not sufficient evidence to enable the Chamber to rule on the compliance of the new Law with the second paragraph of Article 8 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention

87. The applicant complains that his right to peaceful enjoyment of his possessions has been violated as a result of his inability to regain possession of his property. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

88. The Chamber finds that the property concerned constitutes the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. The applicant is in fact exclusive owner of the property.

89. As already established in its decision in *Pletilić and others* (s*up. cit.*), the Chamber considers that the treatment of the applicant's property as abandoned by the authorities of the Republika Srpska and its allocation to third parties for use constitutes or constituted an "interference" with the applicant's right to peaceful enjoyment of his possessions. The interference is still ongoing.

90. The Chamber must therefore examine whether the above interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently certain.

91. The Chamber has further found that the old Law does not meet the standards of a "law" in a democratic society (see paragraphs 83-85 above). This is in itself sufficient to warrant a finding that there has also been a violation of Article 1 of Protocol No. 1

92. In conclusion, in accordance with its decision in *Pletilić and others* (*sup. cit.*), the Chamber finds that there has been a violation of the applicant's right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1 to the Convention. This violation is ongoing, because the applicant has not yet regained possession of his property, despite the fact that he has sought to regain possession of his property under the new Law.

93. The Chamber again notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, at the present time there is not sufficient evidence to enable the Chamber to rule on the compliance of the new Law with Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

94. The applicant did not specifically claim that his rights as protected by Article 6 of the Convention had been violated. However, in view of the fact that he complained of the conduct of the proceedings he had initiated at national level, the Chamber raised this issue *proprio motu* when it transmitted the applications to the respondent Party for its observations on their admissibility and merits.

95. Article 6 of the Convention reads, in relevant parts, 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 ...."

96. The respondent Party did not submit any observations under this provision.

97. The Chamber recalls that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (see e.g. Eur. Court HR, *Langborger v. Sweden* judgment of 22 June 1989, Series A. no 71, page 12, paragraph 23).

98. The Chamber notes that the applicant initiated proceedings before the court in Gradiška on 13 July 1998. In December 1998, the court rejected the case for lack of jurisdiction, stating that issues concerning the regaining of possession of abandoned property were within the sole jurisdiction of the Ministry. It stated further that the courts were not competent to deal with such issues.

99. The Chamber notes that Article 121 of the RS Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 26 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. Such a removal would require a specific statement to this effect. The old Law states (in Article 3; see paragraph 29 above) that abandoned property is to be temporarily protected and managed by the Republika Srpska. This is done in practice through local Commissions established within the Ministry. However, there is no explicit statement that the courts no longer have jurisdiction. Accordingly, the Chamber does not consider that this is indeed the case.

100. Nevertheless, the practical effect of the court decision is that it has been or would, for the time being at least, be impossible for the applicant to have the merits of his civil action against the current occupants of his property determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. In accordance with the Chamber's decision in *Pletilić and others* (*sup. cit.*), there has been a violation of the applicant's right to effective access to court as guaranteed by Article 6 paragraph 1.

4. Discrimination

101. The applicant complained that he had been a victim of a violation of his rights under Article 14 of the Convention, which prohibits discrimination on certain specified grounds in the enjoyment of the rights and freedoms set forth in the Convention. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

> "alleged or apparent 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 arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement ...."

102. The Chamber notes that it has already found violations of the applicant's rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. It must now consider whether the applicant has suffered discrimination in the enjoyment of those rights.

103. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee. As the Chamber noted in its decision in *Đ.M.* (case no. CH/98/756, decision on admissibility and merits delivered on 14 May 1999, paragraph 73, Decisions January–July 1999), these bodies have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly 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 of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see, e.g., case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraphs 86 *et seq.*, Decisions and Reports 1998).

104. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see the aforementioned decision in *Đ.M.*, paragraph 75). Analogous obligations are also contained in the Constitutions of Bosnia and Herzegovina and of the Republika Srpska (see paragraphs 15 and 21 above).

105. The Chamber notes that the applicant is of Bosniak origin.

106. The Chamber recalls that the applicant's ownership of the properties in question has never been in dispute. Nevertheless, his attempts to seek assistance from the authorities in order to regain possession of his property have been unsuccessful, both at the judicial and administrative level.

107. The Chamber notes that the applicant sought to regain possession of his property under the old Law. The Chamber has considered this Law in the context of Article 8 of the Convention (see paragraphs 80-83 above) and concluded that it was drafted in such a way as to deny to refugees and displaced persons any real possibility of regaining possession of their properties.

108. The experience of the present applicant in his attempts to regain possession of his property under this law only serves to reinforce this view. The Chamber notes that the effect of the old Law was to make it extremely difficult for persons who were forced to leave their properties to regain possession of those properties. The effect of the old Law was therefore to reinforce the ethnic cleansing which occurred during the war.

109. The Chamber has already established in its decision in *Pletilić and others* (*sup. cit.*) that the passage and application of Law constitute a discrimination against applicants of Bosniak origin. Almost by definition, the persons who were forced to leave the territory of the Republika Srpska were members of a minority. Accordingly, those are the persons who will suffer as a result of the fact that the old Law did not provide any real possibility of regaining possession of property which those persons had been forced to leave as a result of the war. The old Law will not be used to prevent persons of Serb origin from returning to Gradiška, as they were not required to leave in the first place. On the contrary, the old Law serves to protect the persons of Serb origin who now occupy property which was considered abandoned under the old Law. Accordingly, the effect of the old Law is twofold: it prevents minority return and protects the position of persons of Serb origin who now occupy the properties concerned in the applications. The Chamber recognises the fact that those persons are themselves refugees and displaced persons and that they themselves would, if they were to seek to return to their homes, face the same sort of difficulties as faced by the current applicants. However, this cannot be used as a justification for the passage of the old Law and its application against minority returnees such as the present applicant.

110. In addition, the Chamber has found that the standpoint of the Court in Gradiška (see paragraphs 98-100 above) was such as to deny the applicant his right of access to court. This denial was a consequence of the application by the Court of the old Law. The Chamber notes that the ownership of the property has never been in question. Despite this, the applicant has not managed to regain possession of his property as a result of utilising the different remedies available to him. Accordingly, the evidence before the Chamber suggests that there is a pattern of discrimination consisting of the courts' and relevant authorities' failure to deal with claims for repossession of property lodged by returning Bosniaks, or of not enforcing decisions of the Commission rendered in favour of such persons against temporary occupants of Serb origin.

111. In conclusion, the Chamber finds that the passage and application of the old Law constitutes discrimination against the applicant in relation to his right to respect for his home, to peaceful enjoyment of his possessions and of access to court. This discrimination has been based on the ground of national origin.

112. The Chamber concludes that the applicant has been discriminated against in the enjoyment of his rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. Article 13 of the Convention

113. The applicant alleges that his right to an effective remedy guaranteed under Article 13 of the Convention has been violated. Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

114. The Chamber does not consider it necessary to examine whether there has been a violation of the applicant's rights as guaranteed by Article 13. This is due to the findings the Chamber has made in its examination of the applications under Article 6 of the Convention (see paragraph 100 above).

VII. REMEDIES

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

116. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain possession of his property without further delay.

117. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for proceedings, the applicant was afforded the possibility of claiming compensation within the time-limit fixed by the Chamber. The applicant requested that he be enabled to regain possession of his property. In addition, he requested compensation for mental suffering and for his inability to enjoy use of his property.

118. The applicant claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of 5,000 German Marks (DEM). He also claimed compensation for the cost of renting another property, in the sum of DEM 300 per month for 19 months, totalling DEM 5,700. In addition, he claimed DEM 700 for relocation and painting costs.

119. The Chamber notes that the applicant has claimed compensation for mental suffering allegedly caused to him and his wife, as a result of his inability to regain possession of his property in the sum of DEM 5,000. The Chamber considers that such a sum is too high, in view of the prevailing economic situation in the Republika Srpska. The Chamber does however, consider it appropriate to award a sum to the applicant in recognition of the sense of injustice he has no doubt suffered as a result of his inability to regain possession of his property, especially in view of the fact that he has taken various steps to do so. The Chamber does not consider it appropriate to award sums under this head to members of the applicants' families; it can only award such sums to the applicant.

120. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 1,200 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of his suffering as a result of his inability to regain possession of his property.

121. The applicant also claimed compensation in the sum of DEM 300 per month for 19 months for the rent he allegedly had to pay for his accommodation pending his return to his property. The applicant has not substantiated such a claim. The Chamber considers that, since there is no evidence that the applicant actually had such expenses he should not be awarded compensation in this regard.

122. The applicant claimed DEM 700 for relocation costs, including additional costs, such as repainting, under this head. The Chamber interprets these claims as relating to certain potential future costs the applicant may incur when he regains possession of his property. Also this sum is not

substantiated. Accordingly, the claim under this head must be rejected.

123. Additionally, the Chamber awards 4 % interest as of the date of expiry of the three-month time period set for the implementation of the present decision, on the sum awarded in paragraph 120.

VIII. CONCLUSIONS

124. For the above reasons, the Chamber decides,

1. by 6 votes to 1, to declare the application admissible;

2. by 6 votes to 1, that there has been a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. by 6 votes to 1, that there has been a violation of the right of the applicant to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. by 6 votes to 1, that the impossibility for the applicant to have the merits of his civil actions against the current occupants of his property determined by a tribunal constitutes a violation of his right to effective access to court within the meaning of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. by 6 votes to 1, that the enactment of, and application by the authorities of the Republika Srpska of the Law on the Use of Abandoned Property in the applicant's case constituted discrimination against him on the ground of national origin, in the enjoyment of his rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. unanimously, that it is not necessary to rule on the complaints under Article 13 of the Convention;

7. unanimously, to order the respondent Party to enable the applicant to regain possession of his property without further delay;

8. by 6 votes to 1, to order the respondent Party:

   (a) to pay to the applicant within three months of the delivery of this decision the sum of KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;

   (b) to pay simple interest at the rate of 4 (four) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above three-month period until the date of settlement; and

9. by 6 votes to 1, to order the respondent Party to report to it by 8 January 2000 on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

DECISION ON ADMISSIBILITY AND MERITS

(delivered on 10 May 2002)

Case no. CH/98/799

Željko BRČIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 May 2002 with the following members present:

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

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 Article VIII(2) and Article 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 Croat origin. On 2 February 1992, the applicant concluded a contract with the Yugoslav National Army (hereinafter the "JNA") on purchase of an apartment in Mostar over which he had an occupancy right. During the armed conflict in Bosnia and Herzegovina the applicant left Mostar. In March 1997, he submitted a request for repossession of his apartment to the Municipality Mostar "Stari Grad". He was not reinstated into possession of his apartment. He tried to solve his case through judicial and administrative organs in Mostar. As of the date of this decision, the applicant has not been reinstated into possession of his apartment.

2. The applicant alleges violations of his right to home under Article 8 of the Convention, right to property under Article 1 of Protocol No. 1 to the Convention, and right to fair hearing under Article 6 of the Convention, and he alleges discrimination on ethnic grounds in the enjoyment of the mentioned rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The Chamber registered the application on 24 July 1998. The applicant addressed the Chamber on a few occasions requesting urgency in dealing with his case and submitting different documents. The applicant informed the Chamber that the Office of the Ombudsman of the Federation of Bosnia and Herzegovina has opened an investigation in the same case.

4. On 12 December 2000 the Chamber transmitted the application to the respondent Party for its observations on the admissibility and the merits of the case. On 2 April 2001 the respondent Party submitted its observations.

5. On 28 September 2001 the Chamber received a letter by the applicant stating that the Municipality Mostar Stari Grad issued the procedural decision allowing his reinstatement into possession of the apartment.

6. On 31 December 2001 the Chamber received a request of the respondent Party to hold a public hearing in this case and to ensure that the judges appointed by the Republika Sprska do not participate in the deliberations and the decision of the case.

7. On 17 April 2002 the Chamber received letters by both the applicant and the Federation stating that the temporary users of the applicant's apartment will be evicted on 13 May 2002, according to the decision of the Service for Housing Affairs of the Municipality Mostar Stari Grad.

8. The Chamber considered the case on 8 November 2001, 11 April and 6 May 2002. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. On 2 February 1992 the applicant purchased from the JNA an apartment in Ulica Huse Maslića No. 3 in Mostar Stari Grad over which he had the occupancy right.

10. On 14 February 1992 the applicant transferred through the service of the Mostar post office the amount required by the purchase contract to the competent services of the JNA in Belgrade.

11. The applicant was a civil engineer employed in the JNA. On 19 April 1992 he was demobilised from the JNA. On 3 November 1992 he left Bosnia and Herzegovina and lived as a refugee in Austria until 25 October 1999. Subsequently, he moved to Croatia (Zagreb).

12. On 6 March 1997, the applicant submitted a request for repossession of his apartment to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). As of the date of this decision, he has not received any decision from CRPC.

13. The applicant submitted a request for voluntary return of refugees and displaced persons to the Service for Housing Affairs of the Municipality Mostar Stari Grad on 26 April 1998.

14. On 31 July 1998 he submitted a request for repossession of the apartment to the same organ in accordance with the Law on Cessation of Application of the Law on Abandoned Apartments. Due to the silence of the administration, he repeated his request as an appeal to the Municipality Mostar Stari Grad on 7 September 1999.

15. During the same period, the applicant also started a procedure to change the purpose of part of his apartment into a business premise. On 25 February 1998 the applicant filed a written submission to the Administration for Housing, Public Utilities, Legal-Property Affairs and Construction of the Municipality Mostar Stari Grad ("the Housing Administration") requesting an urban permit to transform part of the apartment in question into a business place. On 23 June 1998 the Housing Administration rejected his request. On 18 September 1998 the appeal authority, the Federal Ministry for Urban Planning and Environment, confirmed the first instance decision. Finally, on 15 April 1999, the Supreme Court of the Federation of Bosnia and Herzegovina rejected the applicant's claims in the administrative dispute initiated by the applicant.

16. On 8 December 1998 the Head of the Municipal service gave the applicant the following answer to one of his numerous submissions: "In view of the problems in finding alternative accommodation for the temporary user of your facility, as well as the number of such cases in the area of the Municipality Mostar Stari Grad, we kindly ask you to take into account these circumstances because we are not in the position to comply with your request within the legally prescribed time limit".

17. In letters to the Ombudsman of the Federation of Bosnia and Herzegovina and to the Federal Ministry of Defence, the Municipality's Department for Housing Affairs stated that the current users occupy the applicant's apartment without legal grounds, and that they are building a private house which has not been finished yet.

18. The applicant addressed the Federal Ministry of Defence with the request to issue an order for his registration in the Land Books as the owner of the disputed apartment. The Federal Ministry of Defence rejected the request by letter of 1 October 1999 on the grounds that he was not in possession of the apartment as required by Article 39a of the Law on Sale of Apartments with Existing Occupancy Rights.

19. On 17 January 2000 the office in Mostar of the Federal Ombudsman informed the applicant that they, acting upon the applicant's complaint, had opened an investigation, and requested a report from the respondent Municipality. The applicant did not receive further information.

20. On 10 August 2001 the Municipality Mostar Stari Grad issued the procedural decision ordering reinstatement of the applicant into possession of his apartment.

21. On 11 April 2002 the Service for Housing Affairs of the Municipality Mostar Stari Grad issued a decision ordering the eviction of the temporary users of the applicant's apartment on 13 May 2002.

B. Relevant domestic legislation

1. Legislation relating to JNA apartments

22. The apartment in question was originally socially owned property over which the JNA had jurisdiction and over which the applicant enjoyed an occupancy right. Socially owned property was considered to belong to society as a whole. Among other things, an occupancy right conferred a right, subject to certain conditions, to occupy an apartment on a permanent basis.

23. Relevant to this case is the Law on Securing Housing for the JNA which came into force on 6 January 1991 (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" - no. 84/90). This law established that JNA apartments could be sold to the members of the JNA (Article 20), having regard to their contributions to the JNA housing fund. It also established the authority so that procedures could be set up to do so (Article 36). In the following years a number of decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina. The aim of those laws was to regulate issues of socially owned property in general and socially owned property over which the JNA had jurisdiction in particular.

24. These laws included a decree issued on 15 February 1992 ("the 1992 decree") by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" – no. 4/92). Article 1(3) of this decree imposed a temporary prohibition on the sale of socially owned apartments, specifically under the means established by the Law on Securing Housing for the JNA. Article 3 of the decree provided that "the contracts on the purchase of apartments or any other legal transactions entered into, i.e. legal documents issued contrary to this decree, are null and void". Article 4 provided that courts and other state organs should not verify signatures or register titles or take other action which was contrary to the prohibition provided in Article 1. Article 5 stated that the temporary prohibition on sales was valid until the entry into force of a law regulating apartments over which the JNA exercised jurisdiction or, at the longest, for a year following the date of issue of the decree.

25. On 3 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (OG RBiH no. 5/95) which ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA until new housing legislation had been adopted.

26. On 22 December 1995 the Presidency issued another decree with force of law (OG RBiH no. 50/95) stating that contracts for the sale of apartments and other property concluded on the basis of the Law on Securing Housing for the JNA were retroactively invalid. It was adopted as law by the Assembly of the Republic and promulgated on 18 January 1996 (OG RBiH no. 2/96). This decree also provided that questions connected with annulled real estate purchase contracts would be resolved under a law to be adopted in the future.

27. The Law on the Sale of Apartments with an Occupancy Right came into force on 6 December 1997 and has subsequently been amended (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 27/97, 11/98 and 27/99). This law, as amended, does not affect the annulment of the present applicant's contract. Under Article 39 of this law, an occupancy right holder who contracted to purchase an apartment on the basis of the Law on Securing Housing for the JNA shall be credited the amount which has been previously paid, calculated in German Marks (DEM) at the exchange rates valid on the day of contracting.

2. The Law on Abandoned Apartments

28. The Law on Abandoned Apartments ("the old law"), originally issued on 15 June 1992 as a decree with force of law, was adopted as law on 1 June 1994. It was amended on several occasions (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). It governed the re-allocation of occupancy rights over socially-owned apartments that had been abandoned.

29. According to the old law, an occupancy right expired if the holder of the right and the members of his or her household had abandoned the apartment after 30 April 1991 (Article 1). An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder or members of the household (Article 2).

30. Proceedings aimed at having an apartment declared abandoned could be initiated by a state authority, a holder of an allocation right (i.e. a juridical person authorised to grant permission to use

an apartment), a political or a social organisation, an association of citizens or a housing board. Except for certain exceptions not relevant to the present application, the competent municipal housing authority was to decide on a request to this end within seven days and could also *ex officio* declare an apartment abandoned (Article 4). Failing a decision within this time-limit, it was to be made by the Ministry for Urban Planning, Housing and Environment. Interested parties could challenge a decision by the municipal organ before the same ministry but an appeal had no suspensive effect (Article 5).

31. An apartment declared abandoned could be allocated for temporary use to "an active participant in the fight against the aggressor of the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostilities (Article 7). Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged to vacate the apartment at the end of that period and to place it at the disposal of the authority that had allocated it (Article 8).

32. The occupancy right holder was to be regarded as having abandoned the apartment permanently if he or she failed to resume using it either within seven days (if he or she had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days (if he or she had been staying outside that territory) from the publication of the Decision on the Cessation of the State of War (OG RBiH no. 50/95, published on 22 December 1995). The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10 compared to Article 3 paragraph 3).

3. The Law on the Cessation of the Application of the Law on Abandoned Apartments

33. The old law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new law") which entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99 and 56/01).

34. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 14 April 1999, also all decisions which had created a new occupancy right pursuant to regulations issued under the old law were valid unless revoked. However, on that date, the High Representative decided that any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 is cancelled. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered as a temporary user (Article 2). Also contracts and decisions made after 7 February 1998 on the use of apartments declared abandoned are invalid. Any person using an apartment on the basis of such a contract or decision is considered to be occupying the apartment without any legal basis (Article 16).

35. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment (Article 7a). In exceptional circumstances, this deadline may be extended for up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefore 30 days before the original deadline expires (Article 3 paragraph 5 compared with Article 7a paragraphs 2 and 3).

36. With a few exceptions not relevant to the present application, the time-limit for an occupancy right holder to file a claim for repossession expired 15 months after the entry into force of the new law, i.e. on 4 July 1999 (Article 5 paragraph 1). If no claim was submitted within that time-limit, the occupancy right is cancelled (Article 5 paragraph 3).

37. Upon receipt of a claim for repossession, the competent authority, normally the municipal administrative authority for housing affairs, had 30 days to issue a decision (Article 6) containing the following parts (Article 7 paragraph 1):

1. a confirmation that the claimant is the occupancy right holder;
2. a permit for the occupancy right holder to repossess the apartment, if there was a temporary user in the apartment or if it was vacant or occupied without a legal basis;
3. a termination of the right of temporary use, if there was a temporary user in the apartment;
4. a time-limit during which a temporary user or another person occupying the apartment should vacate it; and
5. a finding as to whether the temporary user was entitled to accommodation in accordance with the Law on Taking Over the Law on Housing Relations.

38. Following a decision on repossession, the occupancy right holder is to be reinstated into his apartment not earlier than 15 days, unless a shorter deadline applies, and no later than one year from the submission of the claim (Article 7a). Appeals against such a decision could be lodged by the occupancy right holder, the person occupying the apartment and the allocation right holder and should be submitted to the cantonal ministry for housing affairs within 15 days from the date of receipt of the decision. However, an appeal has no suspensive effect (Article 8).

39. If the person occupying the apartment refuses to comply with an order to vacate it, the competent administrative body shall forcibly evict him or her at the request of the occupancy right holder (Article 11). If the occupancy right holder, without good cause, fails to reoccupy the apartment within certain time-limits, his or her occupancy right may be terminated in accordance with the procedures established under the new law and its amendments (Article 12).

4. The Law on Sale of Apartments with an Occupancy Right

40. Relevant to the current case Article 39a of the Law on Sale of Apartments with an Occupancy Right (OG FBiH nos. 27/97 and 11/98) states that a person who entered into a contract to purchase a JNA apartment, who holds the occupancy right over said apartment, and is legally using the apartment shall be registered as that apartment's owner with the competent court by an order of the relevant housing authority within the Federation Ministry of Defence. Article 39c states that Article 39a shall also apply to an occupancy right holder who has "exercised the right to repossess the apartment under the Law on Cessation of Application of the Law on Abandoned Apartments."

41. Article 39d states that if an individual fails to realise their rights to the apartment with the Federation Ministry of Defence, they may initiate proceedings before the competent court.

5. The Law on Administrative Proceedings

42. Under Article 216 paragraph 1 of the Law on Administrative Proceedings (OG FBiH no. 2/98) the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration").

6. The Law on Administrative Disputes

43. Article 1 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

44. Article 22 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

IV. COMPLAINTS

45. The applicant complains that his right to respect for his home as guaranteed by Article 8 of the Convention, his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, his right to a hearing within reasonable time as guaranteed by Article 6 of the Convention, and his right not be discriminated against as guaranteed by Article 14 of the Convention have been violated.

V. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

46. The Federation of Bosnia and Herzegovina, as the respondent Party, states in its observations that the Chamber should declare the application inadmissible for non-exhaustion of domestic remedies.

47. It considers that the applicant should have exhausted the remedies offered by the Law on Sale Apartments with Occupancy Right, i.e. the request for registration to Federal Ministry of Defence (Article 39a) and appeals if necessary (Article 39d). The respondent Party also states that the applicant, in accordance with Article 216 paragraph 3 of the Law on Administrative Disputes should have appealed against the silence of the Municipality Mostar Stari Grad since it did not decide his request within the legal time-limit.

48. In its submission on merits, the respondent Party states that no violation of Article 6 has occurred. It claims that the applicant exhausted remedies in the administrative procedure to change the purpose of his apartment although he had not previously obtained his possession back. Regarding the length of proceeding, the respondent Party considers the conduct of the applicant as inappropriate. Finally, it requested the Chamber to take into account the particular situation of the Municipality of Mostar Stari Grad and more generally of the whole of Bosnia and Herzegovina which face problems to find alternative accommodation for temporary users.

49. In relation to the alleged violation of Article 8 of the Convention, the respondent Party points out that the applicant had started at the same time two procedures: one to be reinstated into his apartment and another to transform it into a business premise. Therefore the applicant's possession cannot be considered as his home within the meaning of the Article 8 of the Convention. If the apartment is considered as "home", the respondent Party claims that Article 8 has not been violated because it respected criteria of Article 8 paragraph 2. The fact that the war has caused mass movement of the population justified the limitation of the applicant's right because it was "necessary in a democratic society". For these reasons, the respondent Party considers it has not violated Article 8 of the Convention.

50. In respect of the complaint of discrimination, the respondent Party states that the same laws are applicable to every citizen and that the applicant did not demonstrate being a victim of any discrimination. Moreover it considers that the applicant was enabled to realise his rights in the different procedures.

51. Regarding Article 1 of Protocol No. 1, the respondent Party underlines that the applicant has not lost his right to his property. It considers that the applicant has not realised his right to repossession in accordance with Article 39 of the Law on Sale of the Apartments with Occupancy Right. Therefore, Article 1 of Protocol No. 1 has not been violated.

52. Finally, in relation to the applicant's claims for compensation, the respondent Party thinks that his request for pecuniary damages is ill-founded because the refugee status provides certain rights such as the right to accommodation free of charge. On the other hand, it considers the applicant's request to hold the Municipality Mostar Stari Grad responsible for the eviction of the current occupants and his repossession as non-pecuniary compensation admissible and fully justified.

53. By submission of 31 December 2001, the Federation requests the Chamber to hold a public hearing in this case, as well as in other 23 cases concerning former JNA apartments. Procedurally, the Federation bases its request on Rule 33 of the Chamber's Rules of Procedure, which provides that the Chamber can decide, *proprio motu* or at the request of a party, to take any action which it considers necessary for the proper performance of its duties under the Agreement. The Federation argues that, as the applicant has failed to submit the payment slips relating to his purchase of the apartment, he is an occupancy right holder and not the owner of the apartment. These factual circumstances, the Federation submits, distinguish the present case from the *Miholić and Others* case (CH/97/60 et al., *Miholić and Others*, decision on admissibility and merits delivered on 7 December 2001), and it is therefore necessary to hold a public hearing and not to apply the reasoning followed in the *Miholić and Others* case to the present application. Moreover, referring to the alleged lack of impartiality of the judges appointed by the Republika Sprska in the *Miholić and Others* case, the Federation asks the Chamber to ensure that these judges do not participate in the present case.

B. The applicant

54. In his submissions the applicant repeatedly states that he is the owner of the apartment in question and that he was wilfully prevented from repossessing his apartment by the actions of the Administration of the Municipality Mostar Stari Grad.

55. As compensation the applicant requests pecuniary compensation for costs of rent in the amount of 5,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") or alternatively the right to transform part of his property into a business premise in order to give him some means of living. Regarding the compensation for non-pecuniary damages, he asks for the renovation of his apartment.

VI. OPINION OF THE CHAMBER

A. The request of the respondent Party for a public hearing

56. The respondent Party requests the Chamber to hold a public hearing in this case in order to establish that the factual circumstances are substantially different from those in the *Miholić and Others* case, on the ground that the applicant can not be considered as the owner of the apartment but solely as an occupancy right holder, because the applicant did not provide the Chamber evidence that he has paid the purchase price of the apartment. The Chamber notes that whether the applicant has paid the purchase price is a question that can be decided on the basis of the documents submitted by the applicant, which the Chamber has forwarded to the respondent Party for its observations. Moreover, the Chamber does not, in this decision, rely on its reasoning in the *Miholić and Others* case, which appears to be the preoccupation of the respondent Party. Therefore, the Chamber has decided not to follow the respondent Party's request to hold a public hearing in the present case.

B. The request of disqualification of the judges appointed by the Republika Srpska

57. The Chamber notes that the grounds relied on by the Federation in asking for the withdrawal or disqualification of the judges appointed by the Republika Srpska in the present case are the same as those set forth in the "motion for the renewal of proceedings" in the *Miholić and Others* case. The plenary Chamber has addressed these allegations and rejected them in its decision in that case (Decision on request for review and on motion for the renewal of proceedings of 8 February 2002, paragraphs 7-10). The Chamber, recalling its arguments in the *Miholić and Others* case, considers that the Federation has not provided any evidence proving a link between the alleged transmission of information to a Party and any of its Members. Furthermore the respondent Party has not showed that one of the Chamber's Members had a personal interest in the applications. The Chamber accordingly decides to reject this motion in the present case as well.

C. Admissibility

58. 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)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement. According to Article VIII(2)(a) of the Agreement, the Chamber shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

59. The applicant directed his application against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber will consider the admissibility of the application as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina separately.

1. Bosnia and Herzegovina

60. During the proceedings before the Chamber, the Chamber has not received any evidence which would tend to indicate that Bosnia and Herzegovina is responsible for what the applicant complains of. The case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore is to be declared inadmissible *ratione personae* as against that respondent Party.

2. Federation of Bosnia and Herzegovina

61. The Chamber notes that the situation complained of by the applicant is within the competence of the Federation of Bosnia and Herzegovina.

(a) Exhaustion of effective domestic remedies

62. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether the applicant exhausted effective remedies available to him. The Chamber has previously recalled that, in relation to the requirement for exhaustion of domestic remedies, under Article 26 (currently Article 35) of the Convention (see case no. CH/97/58 *Onić*, decision on admissibility and merits of 12 January 1999, paragraph 38, Decisions January-July 1999):

> "The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that 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 of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

63. In the particular case, the applicant initiated the procedure before the administrative organs in accordance with the new law in July 1998 when he submitted his request for repossession of the apartment for the first time. The Federation claims that, having in mind that the applicant did not

engage himself enough in this case, and that it does not have the possibility to find alternative accommodation for the temporary users of the applicant's apartment, it could not comply with applicant's request for repossession of the apartment. Since his case had not been considered on 7 September 1999, the applicant submitted an appeal against the "silence of the administration" to the second instance administrative organ. He has never received any answer to that appeal. Taking into account the date of submission of the request and the numerous interventions by the applicant to comply with his request, the Municipality Mostar Stari Grad was obliged to issue the procedural decision upon his request, i.e. to reject it as ill-founded or to accept it. The procedural decision in question was issued only on 10 August 2001, thus, three years after the submission of his request. Still, the applicant is not in the possession of his apartment yet. Accordingly, organs of the Federation of Bosnia and Herzegovina have not complied with their obligation to implement the applicable housing legislation.

64. The Chamber notes that it is true that the applicant could have initiated an administrative dispute against the persistent silence of the first and second instance administrative organs. However, the Chamber observes that a decision in the applicant's favour by a court would only have clarified the duty of the administrative organs to issue a decision recognising the applicant's right to be reinstated. However, the Head of the Municipal Service of Mostar Stari Grad had acknowledged the existence of the applicant's right, but refused to act in accordance with the law (see paragraphs 16 and 17 above). Under these circumstances, there is no reason to suppose that the responsible authorities, which have for a long period disregarded their legal obligations to reinstate the applicant into his apartment, would have treated a decision by a court with any greater respect. The Chamber therefore finds that in the applicant's case the initiation of an administrative dispute did not offer reasonable prospects of success.

65. The respondent Party also argues that, under Article 39d of the Law on Sale of Apartments with Occupancy Right (see paragraph 40 and 41 above), the applicant could have appealed against the letter of 1 October 1999 of the Federation Ministry of Defence, rejecting his request to be registered as the owner in the Land Books. His request was rejected on the ground that he was not in possession of the apartment, and therefore did not fulfil the conditions set out by Article 39a of the Law. In this respect, the Chamber notes that the applicant was misled into believing that he had to repossess the apartment before he could be registered as its owner (see below paragraph 85 and the Chamber's decision in case no. CH/98/457, *Anušić*, decision on admissibility and merits of 10 October 2000, paragraph 79, Decisions July-December 2000). The applicant was therefore justified in pursuing primarily his reinstatement into possession of the apartment, instead of attempting an appeal against the decision of the Ministry of Defence, which moreover was communicated in the form of a letter and not of a procedural decision.

66. In these circumstances the Chamber is satisfied that the applicant could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law.

(b) Admissibility of the discrimination complaint

67. Regarding the applicant's claim that he has been discriminated against, the Chamber notes that the applicant has not submitted any evidence to support his allegation. Therefore, the Chamber is of the opinion that this part of the application is unsubstantiated and manifestly ill-founded.

(c) Conclusion as to admissibility

68. The Chamber further finds that no other ground for the declaring the case inadmissible has been established. Accordingly, the application is to be declared admissible in so far as directed against the Federation of Bosnia and Herzegovina, except for the allegations of discrimination, and inadmissible in so far as directed against Bosnia and Herzegovina.

D. Merits

1. Article 8 of the Convention

69. Article 8 of the Convention, insofar as relevant, provides:

> "1. Everyone has the right to respect for [...] his home [...].
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

70. The respondent Party argues that the apartment in question cannot be considered as the applicant's "home" and that his right to respect of his home has not been interfered with. It submits that the applicant submitted a request for change of purpose of the apartment into business premises, even before he submitted his request for repossession of the apartment.

71. The Chamber notes that the applicant had lived undisturbed in his apartment until 1992, when he had to leave because of the armed conflict in Bosnia and Herzegovina. The Chamber has previously held that persons requesting reinstatement into possession of their property, over which they lost possession during the armed conflict, retained sufficient connection to it that it could be regarded as their "home" for the purpose of Article 8 of the Convention (see case no. CH/97/58, *Onić*, decision on the admissibility and merits of 12 January 1999, paragraph 48, Decisions January-June 1999). The Chamber considers that the applicant left his apartment that had been his "home" until 1992, and he has not been reinstated into it yet. The Chamber further finds that he submitted to the CRPC his request for repossession in 1997. With regard to the respondent Party's argument regarding the applicant's intention to change the purpose of his apartment, the Chamber notes that the applicant intends to change just a part of his apartment into a business premise.

72. The Chamber therefore is of the opinion that the applicant's apartment is to be considered as his home for the purposes of Article 8 of the Convention.

73. The Chamber recalls that the municipality Mostar Stari Grad has issued a decision confirming the applicant's right to repossess his apartment. The applicant has been unable to regain possession of his property due to the clear failure of the authorities of the respondent Party to deal effectively with his request. It follows that the result of the inaction of the respondent Party is that the applicant cannot return to his apartment and that there is an ongoing interference with the applicant's right to respect for his home.

74. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see, *inter alia*, case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraphs 47-58, Decisions and Reports 1998). There will be a violation of Article 8 if any one of these conditions is not satisfied.

75. On 31 July 1998 the applicant submitted a claim to repossess the apartment according to Articles 4, 5 and 6 of the new Law (see paragraphs 13, 14 and 16 above). The applicant holds the occupancy right over the apartment since 1992, and it is still valid. Consequently, he has a right to repossess the apartment according to the new Law. The competent authority was obliged to decide within 30 days according to Article 6 of the Law. It had to accept the claim and had to decide positively on repossession of the apartment by the applicant (Article 7). For more than three years the Service of Housing Affairs, and, after the applicant's appeal against the silence of the administration, the Municipality have failed to decide on the applicant's request.

76. On 10 August 2001 the applicant finally received a decision pursuant to the new law, confirming his right. However this decision, in the applicant's favour, has not been executed. The

respondent Party has not shown that the applicant was notified, at least 30 days before the end of the current occupants' 15 day period for vacating the apartment, of any documented exceptional circumstances warranting an extension of the latter time-limit. Therefore, there is an ongoing violation of Article 8 of the Convention as the procedure followed by the respondent Party under the new law has not been "in accordance with the law" based both upon the three-year silence of the authorities in the face of the proceedings initiated by the applicant, and due to the subsequent failure to enforce his occupancy right once recognised (see case no. CH/97/42, *Eraković*, decision on admissibility and merits of 14 January 1999, paragraph 51, Decisions January-July 1999).

77. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given the failure of the authorities to respond to the applicant's proceedings for three years and the failure to execute the decision effectively entitling the applicant to return to his dwelling.

2. Article 1 of Protocol No. 1

78. The applicant complains that his right to peaceful enjoyment of his possession has been violated as a result of his inability to regain possession of his property. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

(a) As to the applicant's attempts to regain possession of the apartment

79. The Chamber has already decided that the failure of the authorities of the Federation to allow the applicant to regain possession of the apartment constitutes an interference with his right to respect for his home. The Chamber considers that the failure of the authorities to allow the applicant to regain possession of the apartment also constitutes an interference with his right to peaceful enjoyment of his possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

80. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

81. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the failure of the authorities to enable the applicant to regain possession of the apartment was not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated and this violation is ongoing.

(b) As to the applicant's request to have his ownership registered

82. The Chamber has consistently found that the rights under a contract to purchase an apartment concluded with the JNA constitute "possessions" for purposes of Article 1 of Protocol No. 1 to the Convention (see, e.g., cases nos. 96/3, 96/8, and 96/9 *Medan, Bastijanović, and Marković,* decision on the merits of 3 November 1997, paragraphs 32-34, Decisions on Admissibility and Merits March 1996-December 1997). The Chamber notes that in the present case the applicant has concluded such a contract under factual circumstances similar to those obtaining in the case cited and therefore sees no reason to differ from its previous jurisprudence.

83. Accordingly, the Chamber considers that the rights of the applicant under his contract of purchase for the apartment in question constitute "a possession" for the purposes of Article 1 of

Protocol No. 1 to the Convention. One such right is to be registered as the owner of the apartment with the relevant authorities, which, as described above, the applicant has been unable to do.

84. The Chamber considers that the refusal to recognise the right of the applicant to be registered as the owner amounts to an interference with his right to peaceful enjoyment of his possessions, i.e. his rights under his apartment purchase contract. This interference is ongoing, as the applicant is still not registered as the owner of the apartment. Therefore, the Chamber must examine whether this interference can be justified.

85. The Chamber notes that Article 39a of the Law on Sale of Apartments with an Occupancy Right prescribes that the Federation Ministry of Defence must issue an order allowing for the applicant to be registered as the owner under the condition that he is in possession of the apartment over which he holds an occupancy right. In this case, however, the applicant is not in possession of the apartment. Nevertheless, under Article 39c of that law, the Federation Ministry of Defence shall still issue an order to register as the owner of the apartment an individual who has exercised the right to repossess it pursuant to the new Law, regardless of whether such person is actually in possession of the apartment. In this case, the applicant exercised his right under the new Law by applying to the municipality on 31 July 1998 (see paragraph 13 above). The condition under Article 39c of the new Law has therefore been met. The Federation Ministry of Defence has apparently taken the position, however, that it will not issue the relevant order until the applicant is in possession of the apartment, which is contrary to the meaning of Article 39c. Therefore, the Federation Ministry of Defence is responsible for the applicant's inability to be registered as the owner. These behaviours have not been in accordance with conditions provided for by law.

86. In conclusion, therefore, the actions of the Federation Ministry of Defence Sarajevo have led to the applicant's continuing inability to registered as the owner of the apartment. Consequently, the Federation of Bosnia and Herzegovina has violated Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

87. Article 6 of the Convention, insofar as relevant, provides 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…"

88. The applicant alleges violation of his right as guaranteed by this provision. The respondent Party states that there has been no violation of this Article in the applicant's case.

89. The Chamber, having regard to the violations of Article 8 and Article 1 of Protocol No. 1, does not consider it necessary to examine the case under this provision.

VII. REMEDIES

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

91. The Chamber recalls that in accordance with its order for the proceedings in this case the applicant was afforded the possibility of claiming compensation within the time limit fixed by the Chamber. The Chamber has received the claims of the applicant and the observations of the respondent Party regarding compensation of pecuniary and non-pecuniary damages.

92. The Chamber therefore considers it appropriate to order the Federation to take all necessary steps to enable the applicant, whose occupancy right has already been confirmed, to register the apartment as his ownership and to regain possession of his apartment.

93. Article XI(3) of the Agreement provides: "subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding". Thus, a decision of the Chamber does not become final and binding until the provision in Article XI(3) of the Agreement has been met, that is, in particular, until after the Chamber decides upon any requests for review filed in accordance with the Chamber's Rules of Procedure.

94. However, Article XI(1) of the Agreement states that "the Chamber shall promptly issue a decision, which shall address: ... (b) what steps shall be taken by the Party to remedy such breach, including ... provisional measures". The Chamber interprets this provision in the sense that it is authorised to order the respondent Party to take certain steps without further delay, that is, before the decision becomes final and binding pursuant to Article XI(3) of the Agreement, in order to remedy breaches of the Agreement.

95. Since the applicant in the present case has, for a long time, been unable to regain possession of his apartment due to the failure of the respondent Party to reinstate him in a timely manner, the Chamber finds it appropriate to exercise the powers granted under Article XI(1)(b) of the Agreement to order the respondent Party to reinstate the applicant without further delay, and at the latest within one month after the date on which the present decision is delivered, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement.

96. The Chamber also considers it appropriate to order the respondent Party to financially compensate the applicant for the loss of use of his apartment. This sum should be KM 200 per month and payable from the date the time-limit for the competent administrative organ to issue a decision of reinstatement expired, i.e. 30 days after the applicant lodged his request starting with September 1998. This sum should continue to be paid at the same rate until the end of the month in which the applicant regains possession of his apartment.

97. In addition the applicant is awarded the sum of KM 1200 on account of non-pecuniary damages in recognition of his suffering as a result of his inability to regain possession of his apartment, to be paid no later than 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.

98. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period following the date on which this decision becomes final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure, and on any unpaid portion of the sum awarded in paragraphs 96 and 97 until the date of settlement in full.

VIII. CONCLUSIONS

99. For the above reasons, the Chamber decides,

1. unanimously, to declare the application inadmissible against Bosnia and Herzegovina;

2. unanimously, to declare the application inadmissible with regard to the complaint of discrimination;

3. unanimously, to declare the application admissible against the Federation of Bosnia and Herzegovina with regard to the complaints brought under Articles 6 and 8 and Article 1 of Protocol No. 1 to the Convention;

4. unanimously, that the failure to respond to the applicant's request for reinstatement, from 1 September 1998 to 10 August 2001, and the failure to enforce the decision confirming his occupancy right, as from 10 August 2001, violate the applicant's right to respect for his home within the meaning of Article 8 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that the failure to respond to the applicant's request for reinstatement, the failure to enforce the decision confirming his occupancy right and the refusal to register the applicant

as owner of the apartment violate the applicant's right to peaceful enjoyment of his possession within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that it is not necessary to rule on the complaint under Article 6 of the Convention;

7. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps without further delay, and in any event not later than 10 June 2002, by way of legislative or administrative action, to allow the applicant to be registered as the owner of the apartment;

8. unanimously, to order the Federation of Bosnia and Herzegovina to reinstate the applicant into his apartment without further delay, and at the latest on 10 June 2002;

9. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 10,000 (ten thousand) composed of KM 1200 by way of compensation for non-pecuniary damage and KM 8800 by way of compensation for the loss of use of his apartment, and to order the Federation to pay to the applicant KM 200 for each further month that he remains excluded from his apartment as from June 2002 until the end of the month in which he is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

10. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) percent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

11. unanimously, to order the Federation of Bosnia and Herzegovina to report to it, within three months from the date on which 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)
Michèle PICARD
President of the First Panel

DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

CASE No. CH/98/800

Ljiljana GOGIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 May 1999 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. Leif BERG, 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. She occupies a house located at Milana Tepića 64 in Kozarska Dubica, which she uses as a business premises ("the premises"). On 26 February 1990, the applicant entered into a rental agreement with the owner of the premises. They concluded a further contract on 4 September 1995, which is valid for a period of five years from 30 August 1995. On 3 July 1998, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Kozarska Dubica ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") declared the applicant to be an illegal occupant of the premises and ordered her to vacate them within three days under threat of forcible eviction.

2. The case raises issues principally under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 24 July 1998 and registered on the same day.

4. The applicant requested that the Chamber order a provisional measure, namely for the respondent Party to take all necessary action to prevent her eviction from the premises.

5. On 27 July 1998 the President of the Second Panel ordered, pursuant to Rule 36(2), the respondent Party to refrain from evicting the applicant from the premises. The order stated that it would remain in force until the Chamber has given its final decision in the case, unless it was withdrawn by the Chamber before then.

6. On 10 September 1998 the Second Panel decided, pursuant to Rule 49(3)(b) of the Rules of Procedure, to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 18 October 1998. It also decided to request the applicant to submit certain further factual information, which was received on 6 October 1998.

7. On 11 October 1998, the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") informed the Registrar of the Chamber that she did not wish to intervene in the proceedings before the Chamber.

8. No observations were received from the respondent Party.

9. On 20 November 1998, the applicant was requested to submit a written statement and any claim for compensation or other relief which she wished to make. No reply was received within the one-month time-limit laid down by the Chamber's Order concerning the organisation of the proceedings in the case. On 25 January 1999, the Registry wrote to the applicant again, reminding her that her reply was overdue. Her statement, which did not contain a claim for compensation, was received by the Chamber on 2 February 1999.

10. On 5 February 1999, the applicant's written statement was transmitted to the Agent of the respondent Party for information.

11. The Second Panel deliberated upon the admissibility and merits of the application on 9 February 1999, 13 March 1999 and 10 April 1999. On 13 May 1999, the Second Panel adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

12. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

13. The applicant occupies a house located at Milana Tepića 64, Kozarska Dubica, Republika Srpska, in which she operates a shop. On 26 February 1990, the applicant entered into a rental contract with Z.Ć., the owner of the premises. The main terms of this contract were that it was valid for a period of five years. The applicant was obliged to pay YUD 500 (approximately KM 45 at current rates) per month to the owner as rent. The contract was certified by the Municipality of Bosanska Dubica, as it was then called. The parties entered into a further contract concerning the premises on 4 September 1995. This contract is valid from 30 August 1995 until 30 August 2000. A monthly rent of YUD 100 is payable under this contract. The applicant still occupies the premises.

14. On 3 July 1998, the Commission issued a decision declaring the applicant to be an illegal occupant of the premises under Article 10 of the Law on the Use of Abandoned Property (see paragraph 20 below). This decision ordered the applicant to vacate the premises within three days of the date of delivery, under threat of forcible eviction. The applicant received this decision on 23 July 1998. She appealed to the Ministry on 24 July 1998, on the basis that she could not be considered to be an illegal occupant of the premises as she had entered into a contract with the owner which entitled her to use it. The applicant has not received any response to this appeal to date. She was orally informed by an unidentified person that she would be evicted from the premises on 27 July 1998. This eviction was not carried out. The applicant still occupies the premises.

B. Relevant legislation

1. Constitution of the Republika Srpska

15. Article 56 of the Constitution of the Republika Srpska ("the Constitution") reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated against payment of equal compensation."

16. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

> "During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

2. The Law on the Use of Abandoned Property

17. The Law on the Use of Abandoned Property (Official Herald of the Republika Srpska, "OG RS", No. 3/96) ("the Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the Official Herald of the Republika Srpska on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the Law, insofar as they are relevant to the present case, are summarised below.

18. Articles 2 and 11 of the Law define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses, and also business premises.

19. Article 3 of the Law states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on

the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

20. Article 10 of the Law states that if a person enters into possession of abandoned property without a decision of the appropriate commission, that commission shall issue a decision ordering the person to leave the property concerned. An appeal may be lodged to the Ministry by the recipient within three days of its receipt. The lodging of an appeal to the Ministry does not suspend the execution of the decision.

21. Article 15 of the Law reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
>
> 1. to the families of killed soldiers
> 2. war invalids with injuries in categories I-V
> 3. war invalids with injuries in categories V-X
> 4. qualified workers of whom there is a lack in the Republika Srpska."

22. Article 15A of the Law (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

23. The Law also provides, in Article 17, for the accommodation of refugees and displaced persons in properties still occupied, if there is insufficient abandoned property available to accommodate them. This may be done in cases where the current occupiers of a property have over 15 square metres of space per household member.

24. Article 18 of the Law states that the utilisation of abandoned business premises shall be regulated by a separate law.

25. Articles 39 and 40 of the Law set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

26. Article 49 of the Law reads as follows:

> "Lease agreements as well as agreements relating to the use and protection of abandoned apartments and other property entered into after 6 April 1992 between an owner or user who has left the territory of the Republika Srpska and other persons are null and void."

27. Article 53 of the Law reads as follows:

> "The owners or users of real and other property situated in the Republika Srpska who left the territory of the Republika Srpska after 6 April 1992 cannot deal with their property through an authorised person."
>
> Contracts or agreements referred to in the above paragraph relating to the disposal of real and other property concluded after the entry into force of this Law are invalid. In such situations, certification of the signatures of parties to such a contract may not be carried out by the responsible authorities.
>
> (...)"

28. Article 56 of the Law states that the procedure of allocation of abandoned property is to be carried out in accordance with the provisions of the Law on Administrative Procedures (Official List of the Socialist Federative Republic of Yugoslavia, "SL SFRY", No. 47/86), if not otherwise specified in the Law.

29. Under Article 62, the Law is to enter into force on the day after its publication in the Official Herald of the Republika Srpska.

3. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

30. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS No. 38/98) establishes a detailed framework for persons to regain possession of property considered to be abandoned under the Law. It puts the Law on the Use of Abandoned Property out of force.

4. The Law on Administrative Procedures

31. The Law on Administrative Procedures was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

32. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Procedures.

33. Article 8 reads as follows:

> "(1) Before making a decision a party has to be given the opportunity to express his or her opinion on all the facts and circumstances that are of importance in making an administrative decision.
>
> (2) A decision may be made without hearing the opinion of a party only if provided by law."

34. Article 135(1) requires all relevant facts to be ascertained prior to the making of a decision. Under Article 247, a decision on an appeal must be made within two months of the lodging of such appeal.

5. The Law on Administrative Disputes

35. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS No. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25(1), if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued within 7 days of the lodging of such a reminder, the applicant may initiate an administrative dispute.

6. The Decision on Cessation of State of War and Immediate Threat of War

36. The Decision on Cessation of State of War and Immediate Threat of War (OG RS No. 15/96) was adopted on 19 June 1996 and entered into force on 8 July 1996.

7. The Decree on Court Taxation

37. Tariff 23 of the Decree on Court Taxation (OG RS No. 7/97), issued on 2 April 1997, prescribes a fee of YUD 1,000 for the lodging of an administrative dispute.

IV. COMPLAINTS

38. The applicant complains that her rights to respect for home and to work have been violated.

V. SUBMISSIONS OF THE PARTIES

39. The respondent Party has not made any submissions regarding the application.

40. The applicant maintains her complaint and requests that she be allowed to continue to occupy the premises.

VI. OPINION OF THE CHAMBER

A. Admissibility

41. 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.

42. 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. The Chamber notes that the respondent Party has not suggested that there is any "effective remedy" available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

43. The applicant lodged an appeal to the Ministry against the decision of the Commission of 3 Juy 1998. However, the lodging of such an appeal does not have any suspensive effect.

44. The Chamber notes that there has been no decision on this appeal to date. It would have been open to the applicant to commence administrative proceedings before the Supreme Court of the Republika Srpska in respect of the failure of the Ministry to issue a decision on his appeal. Before doing so, he would have had to have lodged a reminder with the Ministry, which she has not done. The Ministry would then have a seven day period in which to issue its decision. The applicant could then have initiated an administrative dispute before the Supreme Court. However, the fee required for the initiation of an administrative dispute is YUD 1,000, which is approximately KM 90 at current rates.

45. As the Chamber noted in the case of *Onić v. Federation of Bosnia and Herzegovina* (Case No. CH/97/58, Decision of 12 January 1999, paragraph 38), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11) the remedies available to an applicant must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. In addition, when applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

46. The Chamber notes that even if the applicant had sought to avail herself of the remedies available to her, she would have had no prospect of success. This is due to the retroactive declaration that rental agreements such as that entered into by the applicant were null and void under Article 49 of the Law (see paragraph 26 above). In addition, Article 53 of the Law prohibits persons who have left the territory of the Republika Srpska after 6 April 1992 from dealing with property through authorised persons (see paragraph 27 above). Both of these provisions apply in the present case. Accordingly, the applicant would have had no prospect of success if she had sought to avail herself of the remedies available to her. The Chamber accordingly considers that there is no effective remedy available to the applicant which she should be required to exhaust. Accordingly, there is no ground for rejecting the application under Article VIII(2)(a) of the Agreement.

47. The Chamber further finds that none of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

48. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

49. In her application to the Chamber, the applicant claimed to be a victim of a violation of the right to respect for her home. This right is guaranteed by Article 8 of the Convention which reads, insofar as relevant, as follows:

> "Everyone has the right to respect for ..., his home ...
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

50. The Chamber notes that the applicant has occupied the premises, which is actually a house located in a residential area, since 1990. The question arises as to whether the premises can be considered to be the applicant's "home" for the purposes of Article 8 of the Convention. She does not actually reside in the premises. However, she operates a shop there which is the sole source of income for herself and her child. This shop, which the applicant has operated from the premises for over eight years, must be considered to be an integral part of her life, both economically and socially. The Chamber therefore considers that it is appropriate to interpret the word "home" in the context of Article 8 of the Convention to include the premises concerned in the present case. Furthermore, this view is supported by the case-law of the European Court of Human Rights. In *Niemietz v. Germany*, (judgment of 16 December 1992, Series A No. 251–B, paragraphs 30–31), that Court held that "generally, to interpret the word ... 'home' as including certain professional or business activities or premises would be consonant with the essential object and purpose of Article 8 ....". In addition, *General Comment* 16(32) on Article 17 of the 1966 International Covenant on Civil and Political Rights states that the word "home" "should be understood as the place where a person lives or carries out his habitual profession". Although not considering the concept in the context of Article 8 of the Convention, this observation is useful in interpreting the notion of "home" generally.

51. The Chamber concludes, therefore, that the premises in question are to be considered as the applicant's "home" for the purposes of Article 8 of the Convention.

52. The Chamber has already held that the threatened eviction of a person from his or her home constitutes an "interference by a public authority" with the exercise of the right to respect for home (*Turčinović v. Federation of Bosnia and Herzegovina*, Case No. CH/96/31, Decision of 11 March 1998, Decisions and Reports 1998, paragraph 20). The decision of the Commission of 3 July 1998 ordering the applicant's eviction from the premises therefore constitutes an "interference by a public authority" with the applicant's right to respect for her home. This decision has not been revoked to date and accordingly the interference is ongoing.

53. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and "was necessary in a democratic society" (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

54. The Chamber has held that the phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (*Kevešević v. Federation of Bosnia and Herzegovina*, Case No. CH/97/46, Decision of 10 September 1998, Decisions and Reports 1998, paragraph 52). To satisfy this requirement, the law must provide a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1 of Article 8. More particularly, the law must be adequately accessible: the citizen must

be able to have an indication that is adequate in the circumstances, of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Finally, the law must provide certain procedural safeguards against abuse (cf. *ibidem*, paragraph 53, with further references).

55. In the present case the decision of the Commission of 3 July 1998 referred to Article 10 of the Law pursuant to which the applicant was to be considered an illegal occupant of the premises which she had contracted to rent in February 1990 with a five-year extension agreed on in September 1995. In the absence of any evidence to the contrary the Chamber must presume that the Commission considered her contract to fall within the scope of Articles 49 and 53 of the Law (see paragraphs 25 and 26 above), thereby having been retroactively annulled with the entry into force of the Law in February 1996. The Law thus rendered ineffective the applicant's legitimate reliance on a contract which was lawful at the time of its conclusion and extension. The interference with her right to respect for her home does not appear to have been foreseeable for the purposes of Article 8 of the Convention and the legal provisions underlying the Commission's decision to order the applicant's eviction does not appear to meet the standards of a "law" as this expression is to be understood for the purposes of Article 8 of the Convention.

56. In addition, the Chamber recalls the requirement inherent in Article 8 of the Convention that a "law" within the meaning of that provision should contain procedural safeguards against abuse. The Chamber notes that the applicant was ordered by the decision of the Commission to leave her home within three days, under threat of forcible eviction. The decision of the Commission was made under Article 10 of the Law. The applicant was entitled to lodge an appeal to the Ministry against this decision, which she duly did, but this did not have the effect of suspending the eviction. Consequently, the applicant was not afforded any real opportunity of challenging the decision ordering his eviction. This is also in contravention of the *lex generalis* applicable to the situation, the Law on Administrative Procedures (see paragraphs 31-34 above), Article 8 of which requires the administrative organ to give the parties the opportunity to express his or her opinion on the matter before reaching a decision. The Law therefore did not afford the applicant an effective procedural safeguard against possible abuse.

57. In the aforementioned circumstances the Chamber concludes that Article 8 of the Convention has been violated, given that the interference with the applicant's right to respect for her home was not "in accordance with the law" as required by paragraph 2 of Article 8.

2. Article 1 of Protocol No. 1 to the Convention

58. The applicant did not specifically allege a violation of her rights as protected by Article 1 of Protocol No. 1 to the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

59. The Chamber must first consider whether the right the applicant obtained under the contracts she entered into with the owner of the house constitute a "possession" within the meaning of Article 1 of Protocol No. 1. The Chamber has previously noted that the European Court of Human Rights has given a wide interpretation to the concept of "possessions", holding that it covers a wide variety of rights and interests having economic value (*M.J. v. Republika Srpska*, Case No. CH/96/28, Decision of 7 November 1997, Decisions on Admissibility and Merits 1996–1997, paragraph 32).

60. The Chamber notes that the applicant's contractual right is of great value to her, granting as

it does the right for her to occupy the premises and accordingly to operate her shop from there. This right therefore constitutes the applicant's "possession" within the meaning of Article 1 of Protocol No. 1.

61. Having established that the applicant's right to occupy the premises constitutes her possession, the Chamber next finds that the decision of the Commission of 3 July 1998 declaring the applicant to be an illegal occupant and ordering her to vacate the premises within three days interfered with her right to peaceful enjoyment of that possession within the meaning of the first sentence of Article 1 of Protocol No. 1.

62. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

63. The Chamber notes that the premises was never entered into the register of abandoned property, as required by Article 2 of the Law (see paragraphs 18 and 19 above). Accordingly, the requirements of national law do not seem to have been adhered to and therefore the interference might not have been "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1 to the Convention.

64. In considering whether a deprivation of property is compatible with Article 1 of Protocol No. 1 it is further necessary to consider whether the measure in question pursued a legitimate aim in the public interest and furthermore whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. There must be a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights and this will not be found if the individual in question has to bear "an individual and excessive burden". The national authorities enjoy a wide margin of appreciation in deciding what is in the public interest and for this decision not to be accepted, it must be "manifestly without foundation" (*Medan, Bastijanović and Marković v. Bosnia and Herzegovina and Federation of Bosnia and Herzegovina*, Case Nos. CH/96/3, 8 & 9, Decisions on Admissibility and Merits 1996-1997, paragraphs 35-36).

65. In the absence of any observations of the respondent Party, the Chamber presumes that the objective of the Law as applied in the applicant's case was to provide a solution for the accommodation needs of the large number of refugees and displaced persons on the territory of the Republika Srpska. This is without doubt a legitimate aim. It remains however to be considered whether there was a reasonable relationship of proportionality between the means employed and the objective sought to be achieved by the Law.

66. The Chamber notes that Article 49 of the Law (see paragraph 26 above) invalidates all contracts entered into after 6 April 1992 which concern the lease, use or maintenance of any type of property, the owner of which has left the Republika Srpska. The Article is so widely drafted as to annul retrospectively every single contract relating to any form of property concluded between 6 April 1992 and the date of entry into force of the Law on the Use of Abandoned Property (*sup. cit.*) entered into by any owner of such property who has left the Republika Srpska. As such, it constitutes a massive deprivation of possession, albeit for the purpose of its allocation to certain categories of persons.

67. Article 1 of Protocol No. 1 to the Convention in general requires the payment of reasonable compensation upon deprivation of possession of property. There are exceptions to this general rule, which require the existence of exceptional circumstances (see, e.g., *Holy Monasteries v. Greece*, judgment of the European Court of Human Rights of 9 December 1994, Series A 301-A, page 35, paragraph 71). Such circumstances might include a state of war, an imminent threat of war or a state of emergency.

68. The Chamber notes that Article 56 of the Constitution of the Republika Srpska allows for the control of the use of property, including dispossession, upon payment of compensation. Amendment XXXI to the Constitution, adopted on 11 November 1994 (see paragraph 16 above), allows for the regulation of the use or disposal of property during a state of war, an imminent threat of war or a state of emergency. However, on 19 June 1996 (see paragraph 36 above), the Government of the

Republika Srpska decided that a state of war, imminent threat of war or a state of emergency no longer existed in the Republika Srpska. Nor has any state of emergency been declared in the Republika Srpska. Accordingly, Amendment XXXI to the Constitution could not be relied upon to justify the continued application of Article 49 of the Law in the applicant's case. It follows that the general constitutional provision in Article 56 of the Constitution (see paragraph 15 above) remains applicable, as does the general principle relating to payment of compensation upon deprivation of property. As noted above, Article 56 of the Constitution allows the control of property rights upon payment of compensation. The Law, however, does not contain any provision for the payment of compensation and no such compensation has been offered.

69. The Chamber has held in *Medan* (*sup. cit.,* paragraph 37) that legislation that retroactively nullifies contractual rights "must be regarded as a particularly serious form of interference with property rights. It involves an infringement of the principle of the rule of law ... and carries the danger of undermining legal security and certainty." Such legislation can therefore only be justified by cogent reasons. The Chamber recognises the serious housing problems facing the Republika Srpska, exacerbated by the large number of refugees and displaced persons on its territory (approximately 400,000 in 1996). However, it considers that the retroactive nullification by the Law of the applicant's contract without provision for the payment of any compensation caused her to bear an individual and excessive burden. Accordingly, there is no reasonable relationship of proportionality between the aim of providing accommodation for refugees and displaced persons and the Law as applied in the case of the applicant.

70. The Chamber concludes therefore that the retroactive nullification of the applicant's rental contract by the Law violated her rights under Article 1 of Protocol No. 1 to the Convention.

3. The right to work

71. The applicant complained in her application to the Chamber that her right to work had been violated. Article II(2) of the Agreement provides that the Chamber shall consider alleged or apparent violations of human rights as provided for in the Convention, as well as discrimination on certain specified grounds in relation to the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Agreement. A number of these agreements provide protection in relation to the right to work. However, for these agreements to be applicable in a particular case, there must be an allegation or indication that the applicant has been discriminated against in the enjoyment of such rights on one of the specified grounds.

72. In the present case, the applicant has not claimed that she has been discriminated against on any ground. Nor is there any indication that this has been the case. Accordingly, the Chamber finds no violation of the Agreement in this respect.

VII. REMEDIES

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

74. The applicant requested the Chamber to issue an order to the respondent Party to the effect that she would be allowed to remain in the premises.

75. The Chamber notes that the Law has been put out of force by the adoption of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. However, this does not of itself remove the threat to the applicant that she would be evicted, as the new Law does not put out of force decisions authorising evictions under the Law.

76. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decision of the Ministry declaring the applicant to be an illegal occupant of the premises and ordering her under threat of eviction to vacate them and to take no further steps to disturb the applicant's occupancy of the house in accordance with the terms of her contract with the owner.

VIII. CONCLUSION

77. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 3 July 1998 declaring the applicant an illegal occupant and ordering her, under threat of eviction, to vacate the premises she currently occupies, constitutes a violation of her right to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 3 July 1998 declaring the applicant an illegal occupant and ordering her, under threat of eviction, to vacate the premises she currently occupies, constitutes a violation of her right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that there has been no violation of the Agreement in respect of the applicant's right not to be discriminated against in the enjoyment of her right to work;

5. unanimously, to order the Republika Srpska to revoke the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 3 July 1998 and to allow the applicant to enjoy undisturbed occupancy of the premises in accordance with the terms of her contract with the owner of 4 September 1995; and

6. unanimously, to order the Republika Srpska to report to it by 11 September 1999 on the steps taken by it to comply with the above order.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/804

Melika ĐUROVIĆ

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 July 2004 with the following members present:

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

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

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

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

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

I. INTRODUCTION

1. The application concerns the applicant's attempts to enter into possession of her pre-war apartment located at Grbavička 125 in Sarajevo, which she purchased from the former Yugoslav National Army ("the JNA") Housing Fund (*Vojna Ustanova za upravljanje stambenih fondom JNA—Beograd, Odeljenje Sarajevo*), according to a purchase contract dated 11 February 1992. The applicant also seeks to be registered as the owner of the apartment.

2. The application appears to raise issues in connection with Article 8 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was introduced and registered on 27 July 1998.

4. On 24 March 2004 the application was transmitted to the respondent Party in connection with Article 8 and Article 1 of Protocol No. 1 to the Convention.

5. On 26 April 2004 the Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits of the application, which were transmitted to the applicant on 28 April 2004. The applicant replied on 14 May 2004.

6. On 7 July 2004, the Commission deliberated on the admissibility and merits of the application, and on the same date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

7. The applicant is the pre-war occupancy right holder over an apartment located at Grbavička 125 in Sarajevo. The applicant was allocated the apartment in 1984 as a Medical Technician at the Military Hospital in Sarajevo (*Vojna Bolnica*) and a civilian member of the JNA. The applicant concluded a contract on use for the apartment on 21 January 1984.

8. On 11 February 1992 the applicant concluded a purchase contract with the JNA Housing Fund for the apartment, in accordance with the Law on Securing Housing for the JNA. The contract provided for the applicant to pay the purchase price in total amount of 161,624 Yugoslav Dinars. The signatures on the purchase contract were not verified before the competent court, but the contract contains the seal of the Tax Administration dated 13 February 1992 noting that no taxes needed to be paid.

9. On 12 February 1992 the applicant paid the purchase price of 161,624 Yugoslav Dinars.

10. On 20 June 1992 the applicant together with her family left the apartment and went to Montenegro.

11. On 24 September 1996 the apartment was declared permanently abandoned, and was allocated to M.Č., who presently uses the apartment.

12. On 23 October 1997 the applicant submitted a request for repossession of the apartment to the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC"). It appears that the CRPC has never issued a decision upon the applicant's request.

13. On 27 May 1998 the applicant filed a repossession request to the Administration for Housing Affairs of Sarajevo Canton ("the Administration", *Uprava za stambena pitanje Kantona Sarajevo*).

14. On 12 July 2001 the Administration issued a procedural decision rejecting the applicant's request for repossession of the apartment as ill-founded, pursuant to Article 3a, paragraph 2 of the Law on Cessation of Application of the Law on Abandoned Apartments ("the Law on Cessation"). The procedural decision states that the applicant was a civilian member of the Yugoslav Army after 14 December 1995, working for Military Post 9195 in Meljine, Montenegro *(Vojna Pošta 9195 Meljine-Crna Gora*), so she cannot be considered a refugee or a displaced person for the purposes of the Law on Cessation.

15. On 28 August 2001 the applicant filed an appeal to the Ministry of Housing Affairs of Sarajevo Canton ("the Ministry", *Ministarstvo stambenih poslova*) against the 12 July 2001 procedural decision.

16. On 5 April 2002 the Ministry issued a procedural decision rejecting the applicant's appeal as ill-founded. The Ministry upheld the procedural decision issued by the Administration, stating that, in accordance with a decision issued by the Unemployment Office of Montenegro-Herceg Novi *(Zavod za zapošljavanje Crne Gore-Biro Herceg Novi)* of 21 October 1998, the applicant served in the JNA on 30 April 1991, and after 14 December 1995 she continued to serve in the Yugoslav Army, working for Military Post 9195 in Meljine, Montenegro *(Vojna Pošta 9195 Meljine-Crna Gora*) until 30 June 1996. Thus, according to Article 3a, paragraph 2 of the Law on Cessation, the applicant cannot be considered a refugee or displaced person and does consequently not have the right to repossess the apartment.

17. On 21 June 2002 the applicant initiated an administrative dispute against the 5 April 2002 procedural decision before the Cantonal Court in Sarajevo, requesting the Court to annul the procedural decision because she claims that she purchased the apartment in 1992.

18. On 17 April 2003 the Cantonal Court issued a judgement accepting the applicant's appeal, annulling the first and second instance decisions, and returning the case to the first instance organ for renewed proceedings. The Cantonal Court found that the first and second instance organs had not taken into consideration the provisions of the Constitution of Bosnia and Herzegovina, Article 8 of the Convention, and Article 1 of Protocol No. 1 to the Convention. The Cantonal Court instructed the first instance organ to determine if the applicant was in possession of the apartment on 30 April 1991 and whether the disputed apartment is her "home" for purposes of Article 8 of the Convention.

19. On 23 September 2003, in renewed proceedings, the Administration issued a procedural decision again rejecting the applicant's request for repossession of the apartment. The Administration repeated its reasoning from the 12 July 2001 decision (see paragraph 14 above).

20. On 23 October 2003 the applicant filed an appeal against the decision of 23 September 2003, stating that the first instance organ in renewed proceedings did not follow the instructions given by the Cantonal Court, and that it did not take the provisions of the Constitution of Bosnia and Herzegovina and the Convention into consideration in her case.

21. The Ministry rejected the applicant's appeal as manifestly ill-founded by its procedural decision of 23 March 2004. The Ministry repeats that the applicant served in a foreign army after 14 December 1995, and therefore cannot be considered a refugee in accordance with the Law on Cessation, and that she does not enjoy the right to repossess the apartment.

22. The applicant currently lives with her sister in Sarajevo.

IV. RELEVANT DOMESTIC LEGISLATION

A. Relevant legislation of the Socialist Federal Republic of Yugoslavia and of the Socialist Republic of Bosnia and Herzegovina

1. Law on Securing Housing for the Yugoslav National Army

23. The applicant purchased the apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia ("OG SFRJ") no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the JNA.

24. Article 21 set forth the general manner in which the purpose price of the apartment was to be determined, which included reductions for the revaluated construction value, the depreciation value, and the revaluated amount of procurement and communal facilities costs of the construction land, and the revaluated amount of the housing construction contribution that was paid to the JNA Housing Fund. The Federal Secretary was also authorized to prescribe the exact methodology for determining the purchase price.

2. Instructions on the methodology to determine the purchase price for JNA apartments ("the Instructions") (*Upustvo o metodoligiji za utvrđivanje otkupne cene stanova stambenog fonda jugoslovenske narodne armije*)

25. These Instructions were published in the Military Official Gazette in April 1991, and they set forth the manner of calculating the purchase price of apartments that were to be purchased from the JNA Housing Fund.

3. Guidelines for purchasing an apartment from the JNA Housing Fund ("the Guidelines") (*Pravilinik o otkupu stanova iz stambenog fonda jugoslovenske narodne armije*)

26. These Guidelines were published in the Military Official Gazette in April 1991 and set forth the procedure to be followed in order to purchase an apartment from the JNA Housing Fund.

4. Law on Taxes on the Transfer of Real Estate and Rights

27. The Law on Taxes on the Transfer of Real Estate and Rights (*Zakon o porezu na promet nepokretnosti I prava*) (Official Gazette of the Socialist Republic of Bosnia and Herzegovina ("OG SRBiH" nos. 37/71, 8/72, 37/73, 23/76, 21/77, 6/78, 13/82 and 29/91) was in force at the time the applicant concluded the purchase contract with the JNA. Article 3, paragraph 1, point 18 provided that taxes on the transfer of real estate are not incurred in the purchase of socially owned apartments.

B. Relevant legislation of the Republic of Bosnia and Herzegovina

1. Law on Abandoned Apartments

28. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina ("OG RBiH") nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). The Parliament of the Republic of Bosnia and Herzegovina approved this Decree on 17 June 1994 and renamed the Decree the "Law on Abandoned Apartments". The Law governed the declaration of abandonment of certain categories of socially owned apartments and their re-allocation.

29. Article 2 set forth that apartments were to be considered abandoned if the pre-war occupancy right holder and his family members left the apartment, even if only temporarily. If the

pre-war occupancy right holder failed to resume using the apartment within the applicable time limit laid down in Article 3 (*i.e.* before 6 January 1996), he or she was regarded as having abandoned the apartment permanently.

30. According to Article 10, as amended, the failure to resume using the apartment within the time limit would result in deprivation of the occupancy right. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority.

2. Law on the Transfer of Real Estate

31. Article 9 of the Law on the Transfer of Real Estate (Official Gazette of the Socialist Republic of Bosnia and Herzegovina ("OG SRBiH") nos. 38/78, 4/89, 29/90 and 22/91; OG RBiH nos. 21/92, 3/93, 17/93, 13/94, 18/94 and 33/94) provided that a contract on the transfer of real estate must be made in written form and that the signatures must be verified by the competent court. Paragraph 4, among other things, provides that written contracts on the transfer of real estate that have been completely or substantially performed are valid even if the signatures of the contractual parties were not verified by the competent court.

C. Relevant legislation of the Federation of Bosnia and Herzegovina

1. The Law on Cessation of the Application of the Law on Abandoned Apartments ("Law on Cessation")

32. The Law on Cessation entered into force on 4 April 1998 and has been thereafter amended (Official Gazette of the Federation of Bosnia and Herzegovina ("OG FBiH") nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01, 15/02, 24/03 and 29/03). The Law on Cessation repealed the former Law on Abandoned Apartments.

33. According to the Law on Cessation, the competent authorities may make no further decisions declaring apartments abandoned (Article 1, paragraph 2). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the Law on Abandoned Apartments are null and void (Article 2, paragraph 1).

34. All occupancy rights or contracts on use made between 1 April 1992 and 7 February 1998 were cancelled (Article 2, paragraph 3). A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered a temporary user (Article 2, paragraph 3).

35. The occupancy right holder of an apartment declared abandoned, or a member of his or her household, has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Article 3, paragraphs 1 and 2).

36. The former Article 3a, paragraphs 1 and 2, which were in force between 4 July 1999 and 1 July 2003, provided as follows:

> "As an exception to Article 3, paragraphs 1 and 2 of this Law, regarding apartments declared abandoned on the territory of the Federation of Bosnia and Herzegovina, at the disposal of the Federation Ministry of Defence, the occupancy right holder shall not be considered a refugee if on 30 April 1991 s/he was in active service in the SSNO (Federal Secretariat for National Defence) – JNA (i.e. not retired) and was not a citizen of Bosnia and Herzegovina according to the citizenship records, unless s/he had residence approved to him or her in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995.
>
> "A holder of an occupancy right from paragraph 1 of this Article will not be considered a refugee if s/he remained in the active military service of any armed forces outside the

territory of Bosnia and Herzegovina after 14 December 1995, or if s/he has acquired another occupancy right outside the territory of Bosnia and Herzegovina."

37. The present Article 3a, which came into force on 1 July 2003, provides as follows:

> "As an exception to Article 3, paragraph 1 and 2 of the Law, regarding apartments declared abandoned on the territory of the Federation of Bosnia and Herzegovina at the disposal of the Federation Ministry of Defence, the occupancy right holder shall not be considered a refugee nor have the right to repossess the apartment if after 19 May 1992, she or he remained in the active service as a military or civilian personnel of any armed forces outside the territory of Bosnia and Herzegovina, unless she or he had residence approved to him or her in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995.
>
> "A holder of an occupancy right from paragraph 1 of this Article will not be considered a refugee or have the right to repossess the apartment in the Federation of Bosnia and Herzegovina, if she or he has acquired another occupancy right or other equivalent right from the same housing fund of the former JNA or newly-established funds of armed forces of states created on the territory of the former Socialist Federal Republic of Yugoslavia."

2. The Law on Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens

38. The repossession of private property is governed by the Law on Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (OG FBiH nos. 11/98, 29/98, 27/99, 43/99, 37/01, 56/01, 15/02, and 23/03). Article 5 provides that, for the purposes of this Law, an owner shall be understood to mean a person who, according to the legislation in force, was the owner of the real property at the moment when that property was declared abandoned.

3. The Law on Sale of Apartments with an Occupancy Right

39. Article 27 of the Law on Sale of Apartments (OG FBiH nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01 and 15/02) provides that the ownership right to an apartment shall be acquired upon registration of that right in the Land Registry books of the competent court.

40. Article 39 reads, in relevant part:

> "The occupancy right holders who previously concluded a contract on purchase of an apartment in accordance with the Law on Securing Housing for JNA … shall have the amount they paid, expressed in German Marks ("DEM") according to the applicable exchange rate on the day of purchase, recognised when the new contract on purchase of the apartment is concluded in accordance with this Law."

41. Articles 39a, 39b, 39c, 39d, and 39e came into force on 5 July 1999, the date of their publication in the Official Gazette of the Federation of Bosnia and Herzegovina, as a result of their imposition by the High Representative of Bosnia and Herzegovina.

42. Article 39a provides:

> "If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the Federal Secretariat for National Defence (SSNO) before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the competent court."

43. Article 39b, in relevant part, provides,

> "In the event that the occupancy right holder referred to in Article 39a of this Law did not effect the payment of the total amount of the sale price of the apartment in accordance with the purchase contract, s/he shall pay the remainder of the amount specified in that contract to the Ministry of Defence of the Federation.
>
> ….
>
> "The provisions of Articles 39a of this Law and paragraph 1 and 2 of this Article shall also be applied to contracts on the purchase of apartments concluded before 6 April 1992, in cases where the verification of signatures has not been done before the responsible court."

44. Article 39c provides:

> "The provisions of Articles 39a and 39b shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98 and 18/99)."

45. Article 39d provides:

> "A person who does not realise his or her rights with the Ministry of Defence, as provided for in this Law, may initiate proceedings before the competent court."

46. Article 39e provides:

> "The occupancy right holder who is not entitled to the repossession of the apartment or does not submit a claim for the repossession of the apartment in accordance with the provisions of Article 3 and 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments and who entered into a legally binding contract on purchase of the apartment with the former Federal Secretariat for National Defence (SSNO) before 6 April 1992, shall have the right to submit a request to the Federation Ministry of Defence for compensation of the funds paid on that basis, unless it is proved that these funds were acknowledged for purchase of an apartment outside the territory of Bosnia and Herzegovina"

4. Law on Civil Procedure

47. Article 54 of the Law on Civil Procedure (OG FBiH nos. 42/98, 3/99 and 53/03) provides as follows:

> "A plaintiff may initiate a lawsuit and request that the court establish the existence or non-existence of some right or legal relationship, and the authenticity or non-authenticity of some document, respectively.
>
> "Such a lawsuit may be initiated when a special regulation provides so, or when the plaintiff has a legal interest that the court establish the existence or non-existence of some right or legal relationship and the authenticity or non-authenticity of some document before the maturity date of the claim for enforcement from the same relationship.
>
> "If the decision in the dispute depends on whether some legal interest, which during the lawsuit became disputable, exists or not, the plaintiff may file, in addition to the existing claim, a complaint requesting that the court establish the existence or non-existence of such relationship, if the court before which the lawsuit is pending is competent for such a complaint.
>
> "Filing the complaint under the provision in paragraph 3 of this Article shall not be deemed modification of the lawsuit."

V. COMPLAINTS

48. The applicant complains that her right to her home in connection with Article 8 of the Convention, and her right to the peaceful enjoyment of her property, in connection with Article 1 of Protocol No. 1 to the Convention, have been violated.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

49. The respondent Party submitted its observations on the admissibility and merits of the application on 26 April 2004, in a joint submission with other applications related to JNA apartments. With regard to the facts in the present case, the respondent Party notes that there is a purchase contract in the applicant's housing file (*stambenoj dokumentaciji*), together with a contract for the maintenance of communal facilitates (*ugovor o održavanju*), and a payment slip in the amount of 161,624.00 Yugoslav Dinars. The respondent Party also states that the applicant's repossession request was rejected because the applicant continued to serve in the Yugoslav Army after 14 December 1995, and, according to Article 3a, paragraph 2 of the Law on Cessation, she cannot be considered a refugee or displaced person and does consequently not have the right to repossess the apartment.

50. As to the admissibility of the application, the respondent Party asserts that the applicant's claim is premature. Considering that the main claim is related to the applicant's ownership right, the respondent Party asserts that this matter could not be resolved through administrative proceedings, but only through the courts, and in the present case the applicant did not initiate court proceedings to determine the validity of her purchase contract. Also, the respondent Party notes that the applicant has not requested the Federation Ministry of Defence (*Federalno ministarstvo odbrane*) to issue an order to be registered as the owner of the apartment. The respondent Party argues that the application is therefore inadmissible.

51. As regards the merits of the application in connection with Article 8 of the Convention, the respondent Party states that, because it has been determined that the applicant served in a foreign army after 14 December 1995, the denial of the applicant's right to repossess the apartment is not at odds with the Chamber's decisions in similar cases. The respondent Party concludes that it has not violated the applicant's right to her home. In connection with Article 1 of Protocol No. 1 to the Convention, the respondent Party notes that the applicant uses the term "ownership" for the apartment over which she had an occupancy right. If the applicant considered herself the owner, the Law on Cessation of the Application of the Law on Abandoned Real Property Owned by Citizens in the Federation of Bosnia and Herzegovina would be applicable. The respondent Party concludes that it has not violated Article 1 of Protocol No. 1 to the Convention.

B. The applicant

52. The applicant submitted her response to the respondent Party's written observations on 14 May 2004. She maintains her claims in full. She asserts that she is the owner of the apartment as evidenced by the contract on purchase and the payment slip, which she submitted to the Chamber. The applicant states that the apartment could not be declared permanently abandoned because it was in Grbavica, on the territory of the Republika Srpska, until 1996. She also states that she has never received a procedural decision declaring the apartment abandoned.

VII. OPINION OF THE COMMISSION

A. Admissibility

53. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided on the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

54. 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 …."

55. In its submission of 26 April 2004, the respondent Party asserts that the applicant has not exhausted the domestic remedies available to her with regard to the registration of ownership over the apartment because the applicant has not addressed the court in relation to her ownership claim, a remedy that the Chamber also acknowledged in case no. CH/97/60 *et al*. *Miholić and others,* decision on admissibility and merits of 9 November 2001, Decisions July-December 2001. Because the applicant's repossession claim was rejected, she must avail herself of civil court proceedings to establish her ownership to the apartment. Therefore this claim is inadmissible for non-exhaustion of domestic remedies.

56. The Commission acknowledges that the Law on Civil Procedure provides a remedy to determine whether some right exists or not, or to determine the authenticity of a document. The Commission recalls that previously the Chamber has found Article 54 of the Law on Civil Procedure (or Article 172, under the former Law on Civil Procedure) an effective domestic remedy that must be exhausted in cases where the applicants did not have a purchase contract in their possession, but rather asserted that they were the owners based on the steps taken towards the purchase of the apartment in 1991 and 1992 (see, *e.g.* case nos. CH/98/1160, CH/98/1177, and CH/98/1264, *Pajagić, Kurozović and M.P*., decision on admissibility of 9 May 2003). The Commission has also adopted the same approach (*see*, *e.g*. case no. CH/99/1921, *Blagojević,* decision of 16 January 2004). In such cases, the Commission considers it reasonable to expect that the applicant must bear the burden of initiating a lawsuit to determine the existence of a contractual relationship or of any contractual rights.

57. In the case at hand, the applicant has a purchase contract that appears, in all aspects, to be a valid contract. It has been signed by all the parties, includes the purchase price and terms of payment, and the contract also contains the seal of the Tax Administration noting that no taxes need to be paid. The Commission considers that the burden of initiating proceedings to determine the validity of the contract should fall on the party who wishes to dispute the contract, and not on the contract holder who otherwise has no reason to doubt the validity of the contract he or she possesses.

58. The Commission concludes that, because the applicant possesses a purchase contract which appears on its face to be valid, initiating a lawsuit in accordance with Article 54 of the Law on Civil Procedure is not a domestic remedy that the applicant must exhaust, within the meaning of Article VIII(2)(a) of the Agreement.

B. MERITS

59. 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 and the other international agreements listed in the Appendix to the Agreement.

1. As to the alleged violation of Article 1 of Protocol No. 1 to the Convention

60. The applicant alleges a violation of the peaceful enjoyment of her possessions with regard to the use and enjoyment of the apartment over which she was the pre-war occupancy right holder and which she purchased in February 1992.

61. Article 1 of Protocol No. 1 to the Convention provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> "The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

62. Article 1 of Protocol No. 1 to the Convention thus contains three rules. The first rule enunciates the general principle that one has the protected right to the peaceful enjoyment of one's property. The second rule covers deprivation of property and subjects it to the requirements of the public interest and conditions laid out in law. The third rule recognises that States are entitled to control the use of property and it subjects such control to the general interest and domestic law. It must then be determined in respect of these conditions whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's rights, bearing in mind that the last two rules should be construed in light of the general principle (*see, e.g.*, case no. CH/96/17 *Blentić,* decision on admissibility and merits of 5 November 1997, paragraphs 31-32, Decisions on Admissibility and Merits March 1996-December 1997). Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

63. The Commission must first consider whether the applicant has any rights under the contract that constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. In this regard, the Commission refers to the Chamber's decisions in case no. CH/96/3 *et al.*, *Medan and others*, decision on merits of 3 November 1997, Decisions on Admissibility and Merits March 1996-December 1997; and case no. CH/97/60 *et al.*, *Miholić and others*, decision on admissibility and merits of 9 November 2001, Decisions July-December 2001. In the aforementioned cases, the Chamber consistently found that the rights under a contract to purchase an apartment concluded with the JNA, pursuant to the Law on Securing Housing for the JNA, constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. The Commission notes that in the present case the applicant concluded a contract under factual circumstances similar to those in the cases cited, and therefore, the Commission sees no reason to differ from the previous jurisprudence of the Chamber in this regard.

a. Interference with the applicant's rights

64. The Commission must next determine the nature of the interference, if any with the applicant's rights flowing from the purchase contract. The Commission is aware that the applicant has not requested the Federation Ministry of Defence (*Federalno ministarstvo odbrane*) to issue an

order to be registered as the owner of the apartment. It is apparent from Article 39c of the Law on Sale of Apartments that the applicant would have no prospect of success because this provision clearly requires the applicant to repossess the apartment in accordance with the Law on Cessation before the Federation Ministry of Defence will issue the order for her to be registered as owner. The Commission also recalls that both the first and second instance organs, in the 23 September 2003 and 23 March 2004 procedural decisions, noted that the applicant could avail herself of Articles 39 and 39a of the Law on Sale of Apartments in so far as she considers herself the owner of the apartment. The Commission therefore concludes that interference with the applicant's rights flowing from the purchase contract is caused by the Law on Sale of Apartments.

b. Public interest

65. The central issue of this case, and what the Commission must now examine, is whether the continuing interference with the applicant's property rights resulting from the application of the Law of Sale of Apartments can be justified as "in the public interest."

66. When considering whether the taking of property is "in the public interest", it must be determined whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim to be achieved. The requisite balance will not be found if the persons concerned had to bear "an excessive burden" (see *e.g.*, Eur. Court HR, *Sporrong and Lönnroth v. Sweden,* judgement of 23 September 1982, Series A no. 52, pp. 26-28, paragraphs 70-73).

67. The European Court has acknowledged that in taking decisions involving the deprivation of property rights of individuals, national authorities enjoy a wide margin of appreciation because of their direct knowledge of their society and its needs. Further, the decision to expropriate property will often involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ. Therefore, the judgement of the national authorities will be respected unless it was "manifestly without reasonable foundation" (Eur. Court HR, *James and Others v. United Kingdom*, judgement of 21 February 1986, Series A no. 98, p. 40, paragraph 46).

68. Nevertheless, respondent Parties have not been granted *carte blanche* when deciding upon appropriate measures of their social and economic policies. Those measures are still subject to the scrutiny of the European Court: (a) They must pursue a legitimate aim; and (b) there must be a "reasonable relation of proportionality between the means employed and the aim sought to be realised" (see the above-mentioned *James and others* judgement, p. 34, paragraph 50). The latter requirement was expressed also by the notion of the "fair balance" that must be struck between the demands of the communal interest and the requirements of the protection of the individual's fundamental rights. There is no "fair balance" if the person concerned has had to bear "an individual and excessive burden" (see the above-mentioned *Sporrong and Lönnroth* judgement, p. 26, paragraphs 69 and 73).

69. In its submission received on 26 April 2004, the respondent Party does not provide any specific comments on the Law on Sale of Apartments. The Commission recalls that Article 39a of the Law on Sale of Apartments specifies that only a person who concluded a legally binding contract with the JNA prior to 6 April 1992, and who is in possession of the apartment may obtain the order from the Federation Ministry of Defence to be registered as the owner of the apartment. Article 39c prevents a person who has not repossessed his or her apartment in accordance with the Law on Cessation from obtaining the order to be registered as owner of the apartment. The respondent Party has asserted no legitimate aim for either of these two provisions, or even reasons supporting such an extraordinary requirement for contract holders. The Commission, *proprio motu*, cannot find any reason for conditioning one's ownership rights upon possession of the property, as provided for in both Articles 39a and 39c of the Law on Sale of Apartments. Lacking any legitimate aim, the Commission therefore must find that the requirement that a contract holder be legally in possession of the apartment before being permitted to register his or

her ownership rights, is not "in the public interest". As such, Articles 39a and 39c of the Law on Sale of Apartments are not compatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

70. The respondent Party generally submits that the applicant should have initiated civil proceedings to determine the validity of her purchase contract. The Commission recalls that Article 39d of the Law on Sale of Apartments provides that persons who do not realize their rights to the apartment through this Law may initiate court proceedings to do so. The respondent Party, however, did not submit any reasons why contract holders who are in possession of their apartment should have their contract recognized, while contract holders who are not in possession must initiate a civil dispute to have their contract declared legally valid. As discussed above in paragraph 56, the Commission accepts that such a requirement is appropriate in cases where the purchase contract was never concluded, or is in some form incomplete or lost, etc., (*see*, *e.g*. case no. CH/99/1921 *Blagojević*, decision of 16 January 2004). When, however, as in the present case, there are no apparent flaws in the purchase contract, the Commission considers that requiring the applicant to initiate court proceedings places an excessive burden on the contract holder, and that this burden is not proportional to any legitimate aim. In coming to this conclusion, the Commission also bears in mind that the same burden is not placed on contract holders who are in possession of their apartment. Therefore, the Commission finds that the blanket requirement to initiate court proceedings as set forth in Article 39d of the Law on Sale of Apartments is not "in the public interest" and, as such it is incompatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

c. Conclusion

71. Having regard to the above, the Commission finds that the provisions set forth in Articles 39a, 39c, and 39d of the Law on Sale of Apartments are not in the public interest, and therefore not compatible with Article 1 of Protocol No. 1 to the Convention. The Commission therefore finds a violation of the right to the peaceful enjoyment of the applicant's possessions under Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina being responsible for this violation.

2. Alleged violation in connection with Article 8 of the Convention

72. Article 8 of the Convention provides as follows,

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> "2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

73. In light of its finding above of a violation of Article 1 of Protocol No. 1 to the Convention, the Commission considers it unnecessary to also examine the application in connection with Article 8 of the Convention.

VIII. REMEDIES

74. The Commission has established that the Federation of Bosnia and Herzegovina violated the right of the applicant to the peaceful enjoyment of her possessions flowing from the purchase contract that she concluded with the JNA in 1992 in connection with Article 1 of Protocol No. 1 to the Convention. 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 (including pecuniary and non-pecuniary damages), as well as provisional measures.

75. The Commission recalls that the applicant has not submitted a compensation claim.

76. In view of the finding of a violation, the Commission considers it appropriate to order the Federation of Bosnia and Herzegovina to ensure that the applicant is allowed to repossess the apartment located at Grbavička 125 in Sarajevo within three months from the date of receipt of this decision, and to ensure that the applicant is registered as the owner over the apartment in the Land Registry books of the competent court within three months from the date of receipt of this decision. The Commission considers that this remedy is sufficient satisfaction for the violations found.

77. The Commission will order the Federation of Bosnia and Herzegovina to submit to it, or its successor institution, a report on the steps taken by it to comply with these orders within four months of the date of receipt of the present decision.

IX. CONCLUSIONS

78. For the above reasons, the Commission decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the right of the applicant to the peaceful enjoyment of her possessions flowing from the purchase contract, within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, to order the Federation of Bosnia and Herzegovina to ensure that the applicant is permitted to repossess the apartment within three months of the date of receipt of this decision, and to ensure that the applicant is registered as the owner over the apartment at Grbavička 125 in Sarajevo in the Land Registry books of the competent court within three months from the date of receipt of this decision; and,

4. unanimously, that it is not necessary to examine the application in connection with Article 8 of the European Convention on Human Rights ;

5. unanimously, to order the Federation of Bosnia and Herzegovina to submit to the Commission, or its successor institution, a report on the steps taken by it to comply with these orders within four months of the date of receipt of the decision.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission

DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

CASE No. CH/98/814

Darko PRODANOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 May 1999 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. Leif BERG, 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 undeclared nationality. He and his family occupy a house located at Konstantinopoljska No. 11 ("the house") in Kozarska Dubica, Republika Srpska. On 15 December 1992, the applicant entered into a rental agreement with the authorised representative of the owner of the house. On 8 July 1998, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Kozarska Dubica ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") declared the applicant to be an illegal occupant of the house and ordered him to vacate it within three days under threat of forcible eviction.

2. The case raises issues principally under Articles 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No.1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 29 July 1998 and registered on the same day.

4. The applicant requested that the Chamber order a provisional measure, namely for the respondent Party to take all necessary action to prevent his eviction from the house.

5. On 30 July 1998, the President of the Second Panel ordered, pursuant to Rule 36(2) of the Rules of Procedure, the respondent Party to refrain from evicting the applicant from the house. The order stated that it would remain in force until the Chamber has given its final decision in the case, unless it was withdrawn by the Chamber before then.

6. On 10 September 1998 the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 18 October 1998.

7. No observations were received from the respondent Party.

8. On 20 November 1998, the applicant was requested to submit a written statement and any claim for compensation or other relief which he wished to make. This statement, which did not contain a claim for compensation, was received by the Chamber on 17 December 1998, within the time-limit laid down by the Chamber's Order concerning the organisation of the proceedings in the case.

9. On 22 January 1999, the applicant's written statement was transmitted to the Agent of the respondent Party for information. It was also sent to the Ombudsperson, who was invited to submit any written observations which she wished to make on the case. On 8 February 1999, the Ombudsperson informed the Chamber that she would not intervene in the proceedings before the Chamber.

10. The Second Panel deliberated upon the admissibility and merits of the application on 9 February, 13 March and 10 April 1999. On 13 May 1999, the Second Panel adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

11. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

12. The applicant, together with his family, is the occupier of a house located at

Konstantinopoljska No. 11, Kozarska Dubica, Republika Srpska. On 15 December 1992, he entered into a rental contract with the authorised representative of the owner of the house. The representative's authorisation had been approved by the Municipal Court of Bosanska Dubica (as it was then called) on 21 October 1992.

13. The main terms of this contract were that it was valid until the owner returns to Kozarska Dubica or until the owner otherwise requires possession of the house. No rent is payable under the contract. The applicant is responsible for the payment of all utility and other charges for the house and is obliged to maintain it in the condition which it was in when he entered into possession of it. The contract is terminable upon three months notice. The applicant and his family have occupied the house continuously since then. The contract was certified by the Municipal Court of Bosanska Dubica (as it was then called) on the same day.

14. On 8 July 1998, the Commission issued a decision declaring the applicant to be an illegal occupant of the house under Article 10 of the Law on the Use of Abandoned Property (see paragraph 21 below). This decision ordered the applicant to vacate the house within three days of the date of delivery, under threat of forcible eviction. The applicant received this decision on the date it was issued. He has not lodged any appeal against the decision.

B. Relevant legislation

1. Constitution of the Republika Srpska

15. Article 56 of the Constitution of the Republika Srpska ("the Constitution") reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated against payment of equal compensation."

16. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

> "During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

2. The Law on the Use of Abandoned Property

17. The Law on the Use of Abandoned Property (Official Herald of the Republika Srpska, "OG RS", No. 3/96) ("the Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the Official Herald of the Republika Srpska on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the Law, insofar as they are relevant to the present case, are summarised below.

18. Articles 2 and 11 of the Law define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

19. Article 3 of the Law states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

20. Article 10 of the Law states that if a person enters into possession of abandoned property without a decision of the appropriate commission, that commission shall issue a decision ordering the person to leave the property concerned. An appeal may be lodged to the Ministry by the recipient within three days of its receipt. The lodging of an appeal to the Ministry does not suspend the

execution of the decision.

21. Article 15 of the Law reads as follows:

> "Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
>
> 1. to the families of killed soldiers
> 2. war invalids with injuries in categories I-V
> 3. war invalids with injuries in categories V-X
> 4. qualified workers of whom there is a lack in the Republika Srpska."

22. Article 15A of the Law (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

23. The Law also provides, in Article 17, for the accommodation of refugees and displaced persons in properties still occupied, if there is insufficient abandoned property available to accommodate them. This may be done in cases where the current occupiers of a property have over 15 square metres of space per household member.

24. Articles 39 and 40 of the Law set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

25. Article 49 of the Law reads as follows:

> "Lease agreements as well as agreements relating to the use and protection of abandoned apartments and other property entered into after 6 April 1992 between an owner or user who has left the territory of the Republika Srpska and other persons are null and void."

26. Article 53 of the Law reads as follows:

> "The owners or users of real and other property situated in the Republika Srpska who left the territory of the Republika Srpska after 6 April 1992 cannot deal with their property through an authorised person.
>
> Contracts or agreements referred to in the above paragraph relating to the disposal of real and other property concluded after the entry into force of this Law are invalid. In such situations, certification of the signatures of parties to such a contract may not be carried out by the responsible authorities.
>
> (...)"

27. Article 56 of the Law states that the procedure of allocation of abandoned property is to be carried out in accordance with the provisions of the Law on Administrative Procedures (Official List of the Socialist Federative Republic of Yugoslavia, "SL SFRY", No. 47/86), if not otherwise specified in the Law.

28. Under Article 62, the Law is to enter into force on the day after its publication in the Official Herald of the Republika Srpska.

3. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

29. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS No. 38/98) establishes a detailed framework for persons to regain

possession of property considered to be abandoned under the Law. It puts the Law on the Use of Abandoned Property out of force.

4. The Law on Administrative Procedures

30. The Law on Administrative Procedures was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

31. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Procedures.

32. Article 8 reads as follows:

> "(1) Before making a decision a party has to be given the opportunity to express his or her opinion on all the facts and circumstances that are of importance in making an administrative decision.
>
> (2) A decision may be made without hearing the opinion of a party only if provided by law."

33. Article 135(1) requires all relevant facts to be ascertained prior to the making of a decision. Under Article 247, a decision on an appeal must be made within two months of the lodging of such appeal.

5. The Law on Administrative Disputes

34. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS No. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25(1), if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued within 7 days of the lodging of such a reminder, the applicant may initiate an administrative dispute.

6. The Decision on Cessation of State of War and Immediate Threat of War

35. The Decision on Cessation of State of War and Immediate Threat of War (OG RS No. 15/96) was adopted on 19 June 1996 and entered into force on 8 July 1996.

7. The Decree on Court Taxation

36. Tariff 23 of the Decree on Court Taxation (OG RS No. 7/97), issued on 2 April 1997, prescribes a fee of YUD 1,000 for the lodging of an administrative dispute.

IV. COMPLAINTS

37. The applicant complains that the decision of the Commission of 8 July 1998 has violated the right of him and his family to live in the house. He does not specify any rights as protected by the Agreement which he claims have been violated by the actions of the respondent Party.

V. SUBMISSIONS OF THE PARTIES

38. The respondent Party has not made any submissions regarding the application.

39. The applicant maintains his complaint.

VI. OPINION OF THE CHAMBER

A. Admissibility

40. 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.

41. 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. The Chamber notes that the respondent Party has not suggested that there is any "effective remedy" available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

42. The applicant has not lodged any appeal to the Ministry against the Commission's decision of 8 July 1998. Under Article 10 of the Law, he has the opportunity to do so. However, the lodging of such an appeal does not have any suspensive effect.

43. As the Chamber noted in the case of *Onić v. Federation of Bosnia and Herzegovina* (Case No. CH/97/58, Decision of 12 January 1999, paragraph 38), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11) the remedies available to an applicant must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. In addition, when applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

44. The Chamber notes that even if the applicant had sought to avail himself of the remedies available to him, he would have had no prospect of success. This is due to the retroactive declaration that rental agreements such as that entered into by the applicant were null and void under Article 49 of the Law (see paragraph 25 above). In addition, Article 53 of the Law prohibits persons who have left the territory of the Republika Srpska after 6 April 1992 from dealing with property through authorised persons (see paragraph 26 above). Both of these provisions apply in the present case. Accordingly, the applicant would have had no prospect of success if he had sought to avail himself of the remedies available to him. The Chamber accordingly considers that there is no effective remedy available to the applicant which he should be required to exhaust. Accordingly, there is no ground for rejecting the application under Article VIII(2)(a) of the Agreement.

45. The Chamber further finds that none of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

46. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

47. The applicant did not specifically allege a violation of his rights as protected by Article 8 of the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. Article 8 reads as follows:

> "Everyone has the right to respect for ..., his home ...
>
> There shall be no interference by a public authority with the exercise of this right except such

as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

48. The Chamber notes that the applicant has lived in the house since December 1992 together with his family. It is therefore clear that the house is to be considered as the applicant's "home" for the purposes of Article 8 of the Convention. The Chamber has already held that the threatened eviction of a person from their home constitutes an "interference by a public authority" with the exercise of the right to respect for home (*Turčinović v. Federation of Bosnia and Herzegovina*, Case No. CH/96/31, Decision of 11 March 1998, Decisions and Reports 1998, paragraph 20). The decision of the Commission of 8 July 1998 ordering the applicant to vacate the house therefore constitutes an "interference by a public authority" with the applicant's right to respect for his home. This decision has not been revoked to date and accordingly the interference is ongoing.

49. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and "was necessary in a democratic society" (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

50. The Chamber has held that the phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (*Kevešević v. Federation of Bosnia and Herzegovina*, Case No. CH/97/46, Decision of 10 September 1998, Decisions and Reports 1998, paragraphs 52-53). To satisfy this requirement, the law must provide a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1 of Article 8. More particularly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances, of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Finally, the law must provide certain procedural safeguards against abuse (cf. *ibidem*, paragraph 53, with further references).

51. In the present case the decision of the Commission of 8 July 1998 referred to Article 10 of the Law pursuant to which the applicant was to be considered an illegal occupant of the house which he had, in December 1992, contracted to rent indefinitely. In the absence of any evidence to the contrary the Chamber must presume that the Commission considered his contract to fall within the scope of Articles 49 and 53 of the Law (see paragraphs 25 and 26 above), thereby having been retroactively annulled with the entry into force of the Law in February 1996. The Law thus rendered ineffective the applicant's legitimate reliance on a contract which was lawful at the time of its conclusion. The interference with his right to respect for his home does not appear to have been foreseeable for the purposes of Article 8 of the Convention and the legal provisions underlying the Commission's decision to order the applicant's eviction does not appear to meet the standards of a "law" as this expression is to be understood for the purposes of Article 8 of the Convention.

52. In addition, the Chamber recalls the requirement inherent in Article 8 of the Convention that a "law" within the meaning of that provision should contain procedural safeguards against abuse. The Chamber notes that the applicant was ordered by the decision of the Commission to leave his home within three days, under threat of forcible eviction. The decision of the Commission was made under Article 10 of the Law. The applicant was entitled to lodge an appeal to the Ministry against this decision, which he duly did, but this did not have the effect of suspending the eviction. Consequently, the applicant was not afforded any real opportunity of challenging the decision ordering his eviction. This is also in contravention of the *lex generalis* applicable to the situation, the Law on Administrative Procedures (see paragraphs 30-33 above), Article 8 of which requires the administrative organ to give the parties the opportunity to express his or her opinion on the matter before reaching a decision. The Law therefore did not afford the applicant an effective procedural safeguard against possible abuse.

53. In the aforementioned circumstances the Chamber concludes that Article 8 of the Convention has been violated, given that the interference with the applicant's right to respect for his home was not "in accordance with the law" as required by paragraph 2 of Article 8.

2. Article 1 of Protocol No. 1 to the Convention

54. The applicant did not specifically allege a violation of his rights as protected by Article 1 of Protocol No. 1 to the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

55. The Chamber must first consider whether the right the applicant obtained under the contract he entered into with the representative of the owner of the house constitute a "possession" within the meaning of Article 1 of Protocol No. 1. The Chamber has previously noted that the European Court of Human Rights has given a wide interpretation to the concept of "possessions", holding that it covers a wide variety of rights and interests having economic value (*M.J. v. Republika Srpska*, Case No. CH/96/28, Decision of 7 November 1997, Decisions on Admissibility and Merits 1996–1997, paragraph 32).

56. The Chamber notes that the applicant's contractual right is of great value to him, granting as it does the right for he and his family to occupy the house. This right therefore constitutes the applicant's "possession" within the meaning of Article 1 of Protocol No. 1.

57. Having established that the applicant's right to occupy the house constitutes his possession, the Chamber next finds that the decision of the Commission of 8 July 1998 declaring the applicant to be an illegal occupant and ordering him to vacate the house within three days interfered with his right to peaceful enjoyment of that possession within the meaning of the first sentence of Article 1 of Protocol No. 1.

58. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

59. The Chamber notes that the house was never entered into the register of abandoned property, as required by Article 2 of the Law (see paragraphs 18 and 19 above). Accordingly, the requirements of national law do not seem to have been adhered to and therefore the interference might not have been "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1 to the Convention.

60. In considering whether a deprivation of property is compatible with Article 1 of Protocol No. 1 it is further necessary to consider whether the measure in question pursued a legitimate aim in the public interest and furthermore whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. There must be a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights and this will not be found if the individual in question has to bear "an individual and excessive burden". The national authorities enjoy a wide margin of appreciation in deciding what is in the public interest and for this decision not to be accepted, it must be "manifestly without foundation" (*Medan, Bastijanović and Marković v. Bosnia and Herzegovina and Federation of Bosnia and Herzegovina*, Case Nos. CH/96/3, 8 & 9, Decision of 3 November 1997, Decisions on Admissibility and Merits 1996-1997, paragraphs 35-36).

61. In the absence of any observations of the respondent Party, the Chamber presumes that the

objective of the Law as applied in the applicant's case was to provide a solution for the accommodation needs of the large number of refugees and displaced persons on the territory of the Republika Srpska. This is without doubt a legitimate aim. It remains however to be considered whether there was a reasonable relationship of proportionality between the means employed and the objective sought to be achieved by the Law.

62. The Chamber notes that Article 49 of the Law (see paragraph 25 above) invalidates all contracts entered into after 6 April 1992 which concern the lease, use or maintenance of any type of property, the owner of which has left the Republika Srpska. The Article is so widely drafted as to annul retrospectively every single contract relating to any form of property concluded between 6 April 1992 and the date of entry into force of the Law entered into by any owner of such property who has left the Republika Srpska. As such, it constitutes a massive deprivation of possession, albeit for the purpose of its allocation to certain categories of persons.

63. Article 1 of Protocol No. 1 to the Convention in general requires the payment of reasonable compensation upon deprivation of possession of property. There are exceptions to this general rule, which require the existence of exceptional circumstances (see, e.g., *Holy Monasteries v. Greece*, judgment of the European Court of Human Rights of 9 December 1994, Series A 301-A, page 35, paragraph 71). Such circumstances might include a state of war, an imminent threat of war or a state of emergency.

64. The Chamber notes that Article 56 of the Constitution of the Republika Srpska allows for the control of the use of property, including dispossession, upon payment of compensation. Amendment XXXI to the Constitution, adopted on 11 November 1994 (see paragraph 16 above), allows for the regulation of the use or disposal of property during a state of war, an imminent threat of war or a state of emergency. However, on 19 June 1996 (see paragraph 35 above), the Government of the Republika Srpska decided that a state of war, imminent threat of war or a state of emergency no longer existed in the Republika Srpska. Nor has any state of emergency been declared in the Republika Srpska. Accordingly, Amendment XXXI to the Constitution could not be relied upon to justify the continued application of Article 49 of the Law in the applicant's case. It follows that the general constitutional provision in Article 56 of the Constitution (see paragraph 15 above) remains applicable, as does the general principle relating to payment of compensation upon deprivation of property. As noted above, Article 56 of the Constitution allows the control of property rights upon payment of compensation. The Law, however, does not contain any provision for the payment of compensation and no such compensation has been offered.

65. The Chamber has held in *Medan* (*sup. cit.,* paragraph 37) that legislation that retroactively nullifies contractual rights "must be regarded as a particularly serious form of interference with property rights. It involves an infringement of the principle of the rule of law ... and carries the danger of undermining legal security and certainty." Such legislation can therefore only be justified by cogent reasons. The Chamber recognises the serious housing problems facing the Republika Srpska, exacerbated by the large number of refugees and displaced persons on its territory (approximately 400,000 in 1996). However, it considers that the retroactive nullification by the Law of the applicant's contract without provision for the payment of any compensation caused him to bear an individual and excessive burden. Accordingly, there is no reasonable relationship of proportionality between the aim of providing accommodation for refugees and displaced persons and the Law as applied in the case of the applicant.

66. The Chamber concludes therefore that the retroactive nullification of the applicant's rental contract by the Law violated his rights under Article 1 of Protocol No. 1 to the Convention.

3. Article 13 of the Convention

67. The applicant did not specifically allege a violation of his rights as protected by Article 13 of the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in this 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."

68. Article 13 "guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order" (*Saša Galić v. Federation of Bosnia and Herzegovina*, Case No. CH/97/40, Decision of 12 June 1998, Decisions and Reports 1998, paragraph 54).

69. The Chamber notes that it has found violations of the applicant's rights as guaranteed by Article 8 and Article 1 of Protocol No. 1 to the Convention. The applicant clearly had an arguable claim that his rights as protected under those provisions had been violated and accordingly he was entitled to an effective remedy at national level in respect of those claims. The respondent Party did not suggest that there was any remedy in the domestic law that would enable the applicant to seek redress for the violations of his rights found by the Chamber.

70. The Chamber notes that the applicant could have lodged an appeal to the second instance organ within the Ministry. One of the required elements of "effectiveness" in the context of Article 13 is institutional effectiveness, which means that a decision maker must be independent of the authority at fault for the alleged or actual violation. This is clearly not the case, as such an appeal would be determined by the Ministry, which itself (through the Commission) made the decision giving rise to the violation. The next procedural step for the applicant would be to initiate an administrative dispute before the Supreme Court of the Republika Srpska. To do so, however, the applicant would have been required to pay a fee of YUD 1,000 (see paragraph 36 above). This is an extremely large sum of money for him to have to pay. It cannot therefore be considered that this remedy is an effective one for the applicant. In addition, for the reasons set out at paragraph 44 above, even if the applicant had initiated an administrative dispute before the Supreme Court, it would have had no prospect of success due to the provisions of Article 49 and 53 of the Law. The Supreme Court does not have the power to declare laws to be unconstitutional.

71. Accordingly, the Chamber considers that the rights of the applicant as guaranteed by Article 13 of the Convention have been violated.

VII. REMEDIES

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

73. The applicant requested the Chamber to issue an order to the respondent Party to the effect that he would be allowed to remain in the house.

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74. The Chamber notes that the Law has been put out of force by the adoption of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. However, this does not of itself remove the threat to the applicant that he would be evicted, as the new Law does not put out of force decisions ordering evictions under the Law.

75. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decision of the Ministry declaring the applicant to be an illegal occupant and ordering him to vacate the house in question and to take no further steps to disturb the applicant's occupancy of the house in accordance with the terms of his contract with the owner.

VIII. CONCLUSION

76. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the decision of the Commission for the Resettlement of Refugees and the

Administration of Abandoned Property in Kozarska Dubica of 8 July 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 8 July 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the lack of an effective remedy to the applicant at national level against the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 8 July 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to an effective remedy in domestic law within the meaning of Article 13 of the Convention;

5. unanimously, to order the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 8 July 1998 and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of his contract with the owner of 15 December 1992; and

6. unanimously, to order the Republika Srpska to report to it by 11 September 1999 on the steps taken by it to comply with the above order.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS

(delivered on 9 March 2001)

Case No. CH/98/834

O.K.K.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 March 2001 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. Peter KEMPEES, 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 Article 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 descent and is currently residing in Germany. She and her daughter are pre-war co-owners of an apartment at Obrada Popadića 5 (ex Indire Gandi) in Srpsko Sarajevo, municipality Srpska Ilidža. The applicant and her daughter left their apartment due to the war hostilities. The case concerns the applicant's attempts to regain possession of the apartment. She lodged an application to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which issued decision recognising the applicant's ownership rights. However, that decision has not been executed.

2. The case raises issues under Articles 8 and 13 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 28 July 1998 the case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina pursuant to Articles V (7) and VIII (1) of the Human Rights Agreement. The case was registered in the Chamber on 3 August 1998.

4. The applicant is represented in the proceedings before the Chamber by her late husband's parents. She asked the Chamber not to reveal her identity.

5. The applicant has submitted additional observations and a specified compensation claim dated 12 October 1998.

6. The case was transmitted to the respondent Party for observations on admissibility and merits on 8 December 1998. The respondent Party has not submitted the observations within the time-limit prescribed by the Chamber's Rules of Procedure.

7. On 2 July 1999 the Chamber received a letter from the applicant dated 30 June 1999 pointing to the fact that the respondent Party had not replied following the transmittal and that the Chamber has not yet adopted a decision. The applicant stated that she maintained her compensation claim as previously set out. She further informed the Chamber that she had received a decision issued by the CRPC, dated 17 December 1998.

8. On 26 November 1999 the applicant informed the Chamber that there had been no developments in her case before the Republika Srpska authorities and stated that she was maintaining all her previous requests including the request for compensation.

9. After the transmission of the applicant's written observations of 26 November 1999 to the respondent Party, the representative of the Republika Srpska submitted written observations on 20 January 2000.

10. On 28 February 2000 the applicant sent observations and comments in response to the respondent Party's written observations of 20 January 2000.

11. On 7 September 2000 the applicant informed the Chamber that she had not yet regained possession of the apartment and requested the Chamber to deal with her case urgently.

12. On 18 October 2000 the Registry received information requested from CRPC, according to which the applicant's CRPC decision had not yet been executed.

13. On 7 November 2000 the Chamber decided to admit the respondent Party's observations of 20 January 2000, although they were received out of time.

14. On 8 January 2001 the applicant informed the Chamber that she had not yet been reinstated into possession of the apartment. On 9 February 2001 the Chamber received the applicant's additional submissions in response to information which had been provided by CRPC.

15. The Chamber deliberated on the case on 11 September 1998, on 15 September and 6 October 1999, on 7 November 2000, on 7 and 8 February 2001 and on 6 March 2001. It adopted the present decision on the latter date.

III. FACTS

16. Before the war the applicant, who is of Serb descent, lived together with her daughter in their apartment at Indire Gandi 5, in Sarajevo (now Obrada Popadića 5, Srpska Ilidža).

17. On 24 April 1992 the applicant and her daughter were forced to leave the apartment since the apartment was located on the front-line and exposed to hostile action. Thereafter, the applicant and her daughter left for Germany.

18. On 18 January 1996 the applicant, represented by her late husband's parents, submitted a request for reinstatement into her possession of her apartment to the Municipality Secretariat for Housing Affairs in Srpska Ilidža ("the Secretariat"). Afterwards the applicant's representatives went to visit the apartment and found a Mr. B.K. there. However, shortly after their visit, Mr. B.K. left the apartment and the applicant's parents-in-law moved into the apartment, cleaned it and started living there.

19. In April 1996 they left the apartment to pay a short visit to relatives. Upon their return they could not re-enter the apartment. Later, they discovered that the apartment had been allocated by the Secretariat to a Ms. M.L. on 7 May 1996.

20. On 4 June 1996 the applicant, through her representatives, appealed to the Secretariat against the above-mentioned decision. On 6 November 1996 the applicant requested the Secretariat to issue a decision restoring the apartment to her within 30 days. On 20 November 1996 the applicant requested the Ministry for Refugees and Displaced Persons of the Republika Srpska ("the Ministry"), Srpska Ilidža Municipality office, that the issuance of the decision on the restoration of the apartment should be dealt with urgently.

21. On 28 March 1997 the applicant, again through her representatives, submitted a new request for the restoration into her possession of her apartment, both to the Ministry and to the Secretariat for Property-Legal Affairs and Cadaster Srpska Ilidža. No decision was issued.

22. On 30 June 1997 the applicant submitted a request to the CRPC requesting to be reinstated together with her under-age daughter into possession of the apartment. On 17 December 1998 the CRPC issued its two decisions (nos. 302-2247-1/1 and 302-2247-1/2) confirming that the applicant and her daughter were co-owners of the apartment.

23. On 22 April 1999 the applicant filed a request with the Republika Srpska Ministry, Municipality of Srpska Ilidža office, demanding reinstatement into her apartment, according to the Law on Cessation of Application of the Law on Use of Abandoned property. As there has been no reply the applicant filed a complaint and another request with the Ministry, Department at the Municipality Srpska Ilidža on 30 June 1999.

24. On 24 November 1999 the applicant submitted a request for enforcement of the CRPC decisions, according to the Law on Implementation of the Decisions of the CRPC (which entered into force as a law of the Republika Srpska on 28 October 1999).

25. On 17 April 2000 the applicant submitted an objection to the Ministry Department at Srpska Ilidža Municipality against the failure to issue a conclusion authorizing the enforcement of a CRPC decisions. She stated that these decisions are final and binding and constituted the most effective legal procedure for the repossession of the apartment. She requested that proceedings be conducted in accordance with the Law on Implementation of CRPC Decisions, following which the applicant's representatives were orally informed that the officials at the Department lacked experience in applying that Law.

26. On 12 May 2000, acting upon the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the Ministry Department in Municipality Srpska Ilidža issued a procedural decision confirming the applicant's ownership over the apartment and ordering that it be returned into her possession. The current occupant of the apartment was ordered to vacate the apartment within 90 days of the procedural decision (the time-limit expired on 12 August 2000) and was granted the right to alternative accommodation. On 24 May 2000 the applicant's representatives requested the enforcement of this procedural decision and, at the same time, they filed an appeal against it because it neither entitled her to repossession of the basement and the garden, nor to compensation, and because the request for the enforcement of the CRPC decisions was ignored. The procedural decision of 12 May 2000 has not been enforced to date.

27. In September 2000 the applicant's representatives met with the Head of the Srpska Ilidža Ministry office, to complain about the lack of action. On 27 September 2000 they also wrote to the central Ministry in Banja Luka, asking them to intervene in this case. In addition, they lodged a complaint for silence of administration, before the Municipality Srpska Ilidža.

IV. RELEVANT LEGAL PROVISIONS

1. The General Framework Agreement for Peace in Bosnia and Herzegovina – Annex 7, Agreement on Refugees and Displaced Persons.

28. The General Framework Agreement for Peace in Bosnia and Herzegovina (the "Agreement") was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (the "Parties") in Paris on 14 December 1995. Annex 7 to the Agreement deals with refugees and displaced persons and in accordance with Article VII of Annex 7 an independent Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees, (CRPC) was established.

29. The CRPC shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not enjoy possession of that property (Article XI). The CRPC shall determine the lawful owner of the property - a concept which the CRPC has construed to include an occupancy right holder - according to Article XII(1). According to Article XII(7) the decisions of CRPC are final and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina.

30. The Parties shall cooperate with the work of the CRPC, and shall respect and implement its decisions expeditiously and in good faith (Article VIII).

2. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees.

31. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Republika Srpska 31/99 – hereinafter "the Law on Implementation") was imposed as a law of the Republika Srpska by a decision of the High Representative in Bosnia and Herzegovina on 27 October 1999. It sets out a regime for the enforcement of decisions of the CRPC.

32. The responsible body of the Ministry of Refugees and Displaced Persons in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens, or relating to apartments for which there is an occupancy right, upon the request for enforcement (Article 3 paragraph 2). The CRPC decisions shall be enforced if a request for the enforcement has been filed to the relevant organ. The following persons are entitled to file such a request: The right holder specified in the CRPC decision and his/her heirs relating to real property owned by citizens (Article 4 paragraph 1) and relating to apartments for which there is an occupancy right; the occupancy right holder referred to in a CRPC decision and the persons who, in compliance

with the Law on housing relations are considered to be members of the family household of the occupancy right holder (Article 4 paragraph 2).

33. The right to file a request for enforcement of a CRPC decision confirming a right to private property is not subject to any statute of limitation (Article 5 paragraph 1). The request for enforcement of a CRPC decision confirming occupancy right must be submitted within 18 months from the date when the CRPC decision was issued, or for decisions issued before this law entered into force, within 18 months from the entry into force of this law (Article 5 paragraph 2, as amended by the High Representative with effect from 28 October 2000. Before that the time limit was one year).

34. The request for enforcement of a CRPC decision shall include two photocopies of the CRPC decision, relating to real property owned by citizens, and three photocopies of the CRPC decision relating to occupancy right (Article 6). The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement, within a period of 30 days from the date when the request for enforcement was submitted and shall not require any confirmation of the enforceability of the decision from CRPC or any other body (Article 7 paragraphs 1 and 2). The conclusion shall contain:

1. a decision on repossession of the property or apartment by the right holder or other requestor for enforcement;
2. a decision terminating the right of the temporary user (where there is one) to use the property or apartment;
3. a time limit for the enforcee to vacate the property;
4. a decision on whether the enforcee is entitled to accommodation in accordance with applicable laws;
5. a requirement that the premises shall be vacated of all persons and possessions, other than those belonging to the person authorised to return into possession.

35. According to Article 7 paragraph 5 the time limit for vacating the property shall be the minimum time limit applicable under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska nos. 38/98, 12/99 and 31/99). No extension of this time limit shall be permitted.

36. In case a petitioner for enforcement has commenced proceedings for enforcement of a decision issued by the responsible administrative organ in relation to the same property or apartment under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, and this person subsequently submits the decision of the CRPC for enforcement, the responsible administrative organ shall join the proceedings for enforcement of both decisions. The date on which the person commenced enforcement of proceedings for the first decision shall be considered, for the purposes of this Law, the date of submission of the request for enforcement (Article 7 paragraph 6).

37. Article 9 states that a decision of the CRPC is enforceable against the current occupants of the property concerned, regardless of the basis on which they occupy it.

3. The Law on General Administrative Proceedings

38. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. Under Article 278 of the Law the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. Article 218 paragraph 2 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against “silence of the administration”).

4. The Law on Administrative Disputes

39. Article 1 of the Law on Administrative Disputes (Official Gazette of the Republika Srpska no. 12/94) provides that the courts shall decide in administrative disputes on the lawfulness of administrative acts concerning rights and obligations of citizens and legal persons.

40. Article 25 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

V. COMPLAINTS

A. The applicant

41. The applicant claims that her rights as guaranteed by Articles 8 and 13 of the European Convention and Article 1 of Protocol 1 to the European Convention have been violated.

B. The Human Rights Ombudsperson for Bosnia and Herzegovina

42. The Ombudsperson concluded in her Report of 29 April 1998 that there had been a violation of Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention in conjunction with the said Articles. The Ombudsperson recommended in her report, *inter alia*, to amend the Law on Abandoned Property to ensure that owners, possessors or users of "abandoned" real property could repossess their property with all the rights they had before 30 April 1991; to take appropriate steps to ensure that the applicant is allowed to return to her pre-war home within 90 days from the receipt of the Report; and that the applicant be paid a nominal sum of 500 DEM by way of reparation of the moral damage suffered.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

43. The respondent Party argues, in its observations received on 20 January 2000, that the complaint was related to an already decided issue and that the complaint has to be rejected under Article VIII (3) of the Agreement. The respondent Party states that, based on the CRPC decision of 17 December 1998, and in accordance with provision of Article 3 of the Law on Implementation of CRPC decisions, the applicant could have lodged a request for enforcement of the CRPC decision in administrative proceedings, and she has not done so yet. The respondent Party further states that the applicant's request to the Ministry –Department Srpska Ilidža of 22 April 1999, is to be considered irrelevant, having in mind that the case was decided by a final decision of the competent international body (CRPC).

B. The applicant

44. The applicant maintains her complaints and claims that the remedies available to her are ineffective.

VII. OPINION OF THE CHAMBER

A. Admissibility

45. Before considering the merits of this case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

46. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997, with further references) the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that 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 of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of personal circumstances of the applicants.

47. In the present case the respondent Party objects to the admissibility of the application on the ground that the domestic remedies provided by the Law on Implementation have not been exhausted. Whilst this law afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to the apartment and is faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

48. The Chamber notes that the applicant, on 30 June 1997, filed a request to the CRPC with a view to being reinstated into the apartment. On 17 December 1998 the CRPC issued two decisions confirming the applicant's and her daughter's ownership rights from which it follows that the applicant is entitled to seek the removal of the temporary occupants from the apartment. However, those decisions have not been enforced despite the applicant's enforcement request of 24 November 1999 to the competent administrative organ of the Ministry, which has been pending for 15 months. It follows that the respondent Party's statement that the applicant has not sought enforcement of the CRPC decision is incorrect. According to Article 7 of the Law on Implementation the competent administrative organ is obliged to issue a conclusion on permission of enforcement within a period of 30 days from the date when the request for enforcement is submitted.

49. The Chamber notes that it is still open to the applicant to make further attempts to have her CRPC decision enforced. However the applicant has already made repeated attempts to remedy her situation and they have been unsuccessful. Use of the remedies provided by the Law on Administrative Disputes because of "silence of administration", even if successful, would also not remedy the applicant's complaints in so far as they relate to the failure of the authorities to enforce the CRPC decisions within the time-limit prescribed by the law. Furthermore, there is no reason to suppose that the responsible authorities, which have for a long period disregarded their legal obligations to enforce the CRPC decisions, will treat the decisions of the courts with any greater respect.

50. In these circumstances the Chamber is satisfied that the applicant could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law

51. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

52. Under Article XI of the Agreement the Chamber must next address the question 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.

1. Article 8 of the Convention

53. Article 8 of the Convention reads, as far as relevant, as follows:

> "1. Everyone has the right to respect for…his home…
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

54. The respondent Party did not submit any observations under this provision.

55. The Chamber notes that the applicant lived in the apartment and used it as her home until such time as she was forced to leave. The Chamber has previously held that links that persons in similar situations, as the applicant in the present case, retained to their dwellings were sufficient for them to be considered to be their "homes" within the meaning of Article 8 of the Convention (see case no. CH/97/58, *Onić,* Decision on the admissibility and merits delivered on 12 February, Decisions January-July 1999, paragraph 48; and case no. CH/97/46, *Kevešević,* decision on the merits delivered on 10 September 1998, paragraphs 39-42, Decisions and Reports 1998).

56. It is therefore clear that the applicant's apartment is to be considered as the applicant's home for the purposes of Article 8 of the Convention.

57. The Chamber notes that it is correct that legislation is in force in the Republika Srpska that theoretically enables persons to repossess their apartments. However, both the Chamber and the European Court of Human Rights have held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, it may also give rise to positive obligations (see e.g. Case No. 96/17, *Blentić v. Republika Srpska*, decisions on admissibility and merits, Decsions 1997, paragraph 27, Marckx v. Belgium, 1979 Series A No. 31 para 31; Airey v. Ireland, 1979 Series A No. 32, para 32; Velosa Barreto v. Portugal, 1995 Series A No. 334, para 23). Therefore the Chamber considers that the Republika Srpska not only has to pass legislation but that the legislation also has to be implemented. Otherwise the legislation is not effective.

58. In the present case the Chamber recalls that the CRPC has issued decisions confirming the applicant's and her daughter's right to repossess their apartment. The applicant has been unable to regain possession of the apartment due to the failure of the authorities of the Republika Srpska to deal effectively, in accordance with Republika Srpska Law, with the applicant's request for the enforcement of the CRPC decisions. The Chamber further notes that the authorities of the Republika Srpska were particularly persistent in failing to deal with various other requests of the applicant aimed at regaining the possession of the apartment, the first of which was submitted as early as 6 November 1996. The Republika Srpska also failed to act in accordance with the Ombudsperson's recommendations (see paragraph 42 above). It follows that the result of the inaction of the Republika Srpska is that the applicant cannot return to her home and that there is an ongoing interference with the applicant's right to respect for her home.

59. The Chamber must therefore examine whether this interference is in accordance with paragraph 2 of Article 8 of the Convention.

60. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of the request for such enforcement. The applicant has still not received a decision on her request to have the CRPC decisions enforced, despite the time-limit for this having expired in December 1999, 14 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicant's request is not "in accordance with the law".

61. As the interference with the applicant's right to respect for her home referred to above is not "in accordance with the law", it is not necessary for the Chamber to examine whether it pursued a "legitimate aim" or was " necessary in a democratic society".

62. In conclusion, there has been a violation of the right of the applicant to respect for her home as guaranteed by Article 8 of the Convention.

2. Article 1 of Protocol No. 1

63. The applicant complains that her right to peaceful enjoyment of her possession has been violated as a result of her inability to regain possession of the apartment. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

64. The respondent Party did not submit any observations under this provision.

65. The Chamber notes that the applicant and her daughter are the co-owners over the apartment in question.

66. Accordingly, the Chamber considers that the applicant's right in respect of the apartment constitutes "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

67. The Chamber considers that the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of the apartment constitutes an "interference" with her right to peaceful enjoyment of that possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

68. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. The latter means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

69. As the Chamber noted, in the context of its examination of the case under Article 8 of the Convention, Article 7 of the Law on Implementation states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of a request for such enforcement. Accordingly, the failure of the competent administrative organ to decide upon the applicant's request is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of her possession as guaranteed by Article 1 of Protocol No. 1. Furthermore, the Chamber notes that the authorities of the Republika Srpska, having failed to act upon the applicant's requests from 6 November 1996 onwards, issued a procedural decision confirming the applicant's ownership over the apartment on 12 May 2000. However, this procedural decision has not been enforced to date either, despite the applicant's request for its enforcement (see paragraph 26 above).

70. As the interference with the applicant's right to peaceful enjoyment of her possessions is not subject to conditions provided for by law, it is not necessary for the Chamber to examine whether it was in the public interest.

71. In conclusion, there has been a violation of the right of the applicant to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

3. Article 13 of the Convention

72. Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

73. The applicant alleges violations of her rights as guaranteed by this provision. The respondent Party states that the applicant, allegedly, did not submit the request for enforcement of the CRPC decision. The Ombudsperson concluded in her Report of 29 April 1998 that there was a violation of Article 13.

74. The Chamber, having regard to other violations of the applicant's rights it has found, does not consider it necessary to examine the case under this provision.

VIII. REMEDIES

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

76 In her claim for compensation the applicant requests that the respondent Party be ordered: 1) to restore the apartment to the previous condition as it was on 24 April 1992; 2) to pay the sum of 80.000 DEM for the stolen movable property and household items; 3) to pay the sum of 850 DEM per month for pecuniary damage - the rent in Germany, starting from 24 April 1992; 4) to pay the sum of 500 DEM as a compensation for non-pecuniary damage in accordance with the Ombudsperson's Report of 29 April 1998. Further, the applicant offered amicable resolution as an alternative for the above mentioned claims. As amicable resolution the applicant proposes to the respondent Party to pay to her the sum of 255.100 DEM (which is comprised of 106.800 DEM for the apartment, 80.000 DEM for the missing movable property, 66.300 DEM for the rent in Germany and 2.000 DEM for non-pecuniary damage).

77. The respondent Party did not submit any observations on the applicant's claim for compensation.

78. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision and to enable the applicant to regain possession of her apartment without any further delay and at 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.

79. With regard to possible compensatory awards the Chamber considers 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 regain possession of her apartment, especially in view of the fact that she has taken all necessary steps to have the CRPC decisions enforced and that the authorities of the Republika Srpska were particularly persistent in failing to deal with various other requests of the applicant aimed at regaining possession of the apartment.

80. Accordingly the Chamber will order the respondent Party to pay to the applicant the sum of 2000 Convertible Marks (Konvertibilnih Maraka, "KM") in recognition of her suffering as a result of her inability to regain possession of her apartment.

81. Concerning the applicant's claim for her movable property, the Chamber notes that there is no evidence before it that this movable property was alienated after 14 December 1995, the date of entry into force of the Agreement. In addition, there is no indication that the respondent Party is responsible for any damage that may have occurred to her movable property. Accordingly, this claim must be rejected. The same reasoning applies to the applicant's claim for the restoration of her apartment to its previous condition.

82. The applicant claims the sum of DEM 850 per month from April 1992 for the rent in Germany. She did not submit any evidence to support her claim. The Chamber considers that the sum of KM 300 is appropriate to compensate for the loss of use of the apartment and any extra costs for each month the applicant has been and continues to be forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be payable from 6 December 1996, the date the time-limit for the competent municipal organ to issue a procedural decision upon the applicant's first request to regain possession of the apartment (see paragraph 20 above), expired, up to and including March 2001, amounting to a total of KM 15.600. This sum should continue to be paid at the same rate until the end of the month in which the applicant regains possession of her apartment.

83. In its decision on the claim for compensation of 16 March 1998 in the *Damjanović* case (CH/96/30, Decisions and Reports 1998), the Chamber ordered the payment of simple interest at an annual rate of 4% on compensation for damage paid after the expiry of the time-limit set for that purpose. The award compensation for damage was expressed in German currency and 4% was the legal rate of default interest in Germany at that time. The Chamber considers that it should now award such interest at an annual rate of 10%, which more closely reflects economic reality in Bosnia and Herzegovina. Interest at that rate should be paid as of the date of expiry of the one month period set in paragraph 78 for the implementation of the present decision, and on each sums awarded in paragraphs 80 and 82 or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

84. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the non-enforcement of the decision of the CRPC constitutes a violation of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article 1 of the Agreement;

3. unanimously, that the non-enforcement of the decision of the CRPC constitutes a violation of the right of the applicant to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article 1 of the Agreement;

4. by 6 votes to 1, that it is not necessary to rule on the complaints under Article 13 of the Convention;

5. unanimously, to order the Republika Srpska to take all necessary steps to enforce the CRPC decision and to enable the applicant to regain possession of her apartment without any further delay, and at 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;

6. unanimously, to order the Republika Srpska to pay to the 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, the sum of KM 2.000 for non-pecuniary damage;

7. unanimously, to order the Republika Srpska to pay to the 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, the sum of KM 15.600 as compensation for the loss of use of the apartment and for any extra costs during the time the applicant has been forced to live in alternative accommodation;

8. unanimously, to order the Republika Srpska to pay to the applicant KM 300 for each further month that she continues to be forced to live in alternative accommodation as from 1 April 2001 until the end of the month in which she is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

9. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement in full;

10. unanimously, to dismiss the remainder of the applicant's claim for remedies; and

11. unanimously, to order the Republika Srpska to report to it within one month of the date of this decision becoming 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)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 November 2003)

Case no. CH/98/835

Hamdo SULJOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2003 with the following members present:

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

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

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

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The case arises from the expropriation of a piece of land owned by the applicant, carried out by the Municipality of Novi Grad Sarajevo. The expropriation took place in 1985, encompassing both the land and several buildings that belonged to the applicant. However, the purpose of the expropriation, the construction of a residential settlement, was never put into practice.

2. At the outset, the applicant unsuccessfully tried to challenge the expropriation procedure. After it had become clear that the purpose of the expropriation would never be realised, the applicant requested that his land be given back to him. The myriad proceedings initiated by the applicant before the domestic administrative and judicial bodies and aimed at rectifying the expropriation have, taken together, lasted for more than 17 years.

3. The application raises issues under Article 6 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 5 January 1998. The applicant is represented by Ms. Hanka Suljović.

5. In his application, the applicant requested that the Chamber order the respondent Party, as a provisional measure, to annul all decisions of domestic administrative and judicial organs pertaining to his land. On 10 September 1998, the Chamber decided not to issue such an order.

6. On 18 December 2002, the application was transmitted to the respondent Party. Observations of the Federation of Bosnia and Herzegovina were received on 19 February and 28 February 2003. The applicant sent submissions on 26 May, 30 September and 18 November 1998, on 7 July and 19 December 2000, on 14 May and 21 August 2001, on 3 January, 25 February, 5 April, 24 June, 2 July and 5 August 2002, and on 11 April 2003.

7. The Chamber deliberated on the admissibility and merits of the case on 4 December 2002, and on 4 September and 11 October 2003. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Before the entry into force of the General Framework Agreement

1. The expropriation procedure

8. On 17 November 1985, the Municipal Secretariat for Housing, Property, Legal Affairs and Cadastre of the Municipality of Novi Grad Sarajevo (*Opštinski sekretarijat za stambene, imovinsko-pravne poslove i katastar*; "the Municipality") issued a decision to expropriate real property belonging to the applicant, registered as cadastral lot no. 1812 in the cadastral books of Novo Sarajevo III. The expropriated land was intended to be used for the construction of a residential settlement named "Vojničko Polje". It appears that some of the buildings erected on the applicant's land lacked a valid building permit, and that therefore, compensation only was awarded in relation to those buildings that were constructed lawfully. It was also stipulated that the applicant should be provided with replacement accommodation in order to meet his housing needs. The applicant appealed against this decision.

9. On 6 May 1986, the Republic Administration for Property and Legal Affairs (*Republička uprava za imovinsko-pravna poslova*) of the Socialist Republic of Bosnia and Herzegovina ("the Republic Administration") rejected the applicant's appeal against the decision of 17 November 1985 on the grounds of wrongfully established facts as ill-founded.

10. On 15 July 1986, the applicant and the Municipality reached a partial agreement on compensation. On 27 January 1987, the Basic Court II of Sarajevo made a final ruling on the issue, deciding to award to the applicant the sum of roughly 1,000,000 Yugoslav Dinars.

11. The applicant moved out of his home on 8 December 1987, and subsequently, all buildings on his land were pulled down. However, the settlement project originally envisaged by the expropriation was never realised.

2. The de-expropriation procedure

12. On 8 January 1991, the applicant submitted a request to the Municipality with a view to being returned the land that was expropriated from him in 1985 (so-called "de-expropriation"). On 1 July 1991, the Municipality rejected the request. On 29 August 1991, the Republic Administration, as the second instance administrative body, confirmed the Municipality's decision.

3. The request for renewal of the expropriation procedure

13. Also on 8 January 1991, the applicant requested the Republic Administration to renew proceedings in his case, *i.e.*, to re-conduct proceedings that were terminated by the decision of the Republic Administration of 6 May 1986 (see paragraph 9 above). On 3 September 1991, the Republic Administration rejected his request.

14. After the initiation of an administrative dispute, on 30 January 1992, the Supreme Court of Bosnia and Herzegovina accepted the applicant's request and quashed the Republic Administration's decision of 3 September 1991. The Supreme Court reasoned that the purpose of the preceding expropriation, the construction of a residential settlement, had not been met to date and that according to the law, the decision on expropriation of 17 November 1985 should be considered null and void. The Republic Administration was instructed to deal with the case again, taking into account this finding.

B. After the entry into force of the General Framework Agreement

15. On 25 February 1996, the Republic Administration complied with the decision of the Supreme Court of Bosnia and Herzegovina issued on 30 January 1992 and annulled its own decision of 3 September 1991, in which it had rejected the proposal to re-conduct expropriation proceedings. The Republic Administration invited the applicant to specify his claim, upon which a new decision would be reached.

16. Thereafter, the applicant pointed out that he sought both the renewal of expropriation proceedings and the de-expropriation of his land. On 5 April 1996, the Republic Administration rejected both claims. The applicant initiated an administrative dispute against this decision before the Supreme Court of the Federation of Bosnia and Herzegovina.

17. On 17 October 1996, the Supreme Court of the Federation of Bosnia and Herzegovina accepted the applicant's lawsuit insofar as his request for de-expropriation was concerned, but it rejected the complaint concerning the refusal to renew expropriation proceedings. In its judgment, the Supreme Court found that the Republic Administration was not competent to decide on the matter, and ordered that the first instance organ, *i.e.*, the Municipality, deal with the issue of de-expropriation of the applicant's land. It appears that the Municipality did not take any steps in that direction in the following time.

18. The applicant, unsatisfied with the course of events, then decided to initiate an administrative dispute against the decision of the Republic Administration of 29 August 1991, which concerned the de-expropriation of his land (see paragraph 12 above). On 18 March 1998, the Supreme Court of the Federation of Bosnia and Herzegovina rejected the applicant's lawsuit as ill-founded. On 12 April 1999, the Director of the Federal Administration, which is the legal successor of the former Republic Administration, wrote a letter to the applicant, stating that in his view, the rejection of the applicant's request for de-expropriation had become final and binding by the mentioned judgment of the Supreme Court of 18 March 1998.

19. On 4 November 1999, the Municipal Court II in Sarajevo rejected the applicant's claim to obtain additional compensation for his real estate that was expropriated in 1985.

20. On 2 November 2000, the applicant requested the Municipality to return to him the land that was subject to expropriation in 1985. As neither the Municipality nor the Federal Administration responded to his submissions, he initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina with a "silence of administration" complaint. On 9 August 2001, the Supreme Court accepted his claim and ordered the administrative organ of first instance to issue a decision on the applicant's request within 30 days.

21. On 25 December 2001, the Federal Administration rejected the applicant's request as ill-founded. Against this decision, the applicant initiated another administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina, which on 6 March 2002 decided in the applicant's favour, quashed the decision of 25 December 2001, and returned the case to the Federal Administration for renewed consideration.

22. On 24 June 2002, the Federal Administration rejected the applicant's claim to nullify the decision of the Republic Administration of 6 May 1986, in which the applicant's appeal against the expropriation of his real estate had been turned down (see paragraph 9 above). Against this decision, an administrative dispute before the courts could be instituted. It appears that the applicant has not initiated such proceedings.

IV. RELEVANT LEGISLATION

A. The Law on Expropriation

23. Article 32 of the Law on Expropriation (Official Gazette of the Socialist Republic of Bosnia and Herzegovina Nos. 12/87 – consolidated text and 38/89 taken over as a law of the Federation of Bosnia and Herzegovina according to Article IX(5)(1) of its Constitution) sets out the conditions under which a decision on expropriation can be annulled. It was amended in 1994 (Official Gazette of the Republic of Bosnia and Herzegovina Nos. 11/94 and 15/94) and reads, in relevant part:

> "…
> (4) A valid procedural decision on expropriation shall be annulled following a request of the former owner of the expropriated real property, if the beneficiary of the expropriation has not performed, pursuant to the nature of the building, any considerable work on that building within three years since the procedural decision became valid.
> …
> (7) The request for the annulment of the procedural decision on expropriation may be filed by the former owner after the expiry of three years from the date on which the procedural decision became valid, until the beneficiary of the expropriation has performed considerable works."

24. Article 67 of the Law on Expropriation reads:

> "(1) In case of expropriation of a building or a particular part of a building, which was built without the approval of the competent organ, a former owner is not entitled to compensation for such real property.
> …
> (2) As an exception to the provision of the previous paragraph, the owner of a residential building or a particular part of a residential building built before 15 February 1968, which he or she occupies alone or with the members of his/her family, is entitled to compensation for that building or a particular part of the building and to be provided with appropriate accommodation.
> …"

The provisions of this Article ceased to be in force by a decision of the Constitutional Court of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Social Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" – no. 4/90) and by a decision of the Constitutional Court of the Federal Republic of Yugoslavia (OG SRBiH no. 20/91 and Official Gazette of the Socialist Federal Republic of Yugoslavia no. 45/91).

B. The Law on Administrative Procedure

25. Under Article 216 of the Law on Administrative Procedure (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – Nos. 2/98 and 48/99), the competent first instance administrative organ has to issue a decision within 30 days upon receipt of a request. Paragraph 3 of Article 216 provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit (appeal against the "silence of the administration").

26. Article 243 paragraph 2 of the same Law provides that the second instance administrative body shall conduct the proceedings and solve the matter by its own decision if it finds that the reasons for which a decision was not made by the first instance organ within the deadline of 30 days were not justified. Exceptionally, if the second-instance body finds that the proceedings will be faster and more efficiently solved by the first-instance body, then it shall order that body to do so.

C. The Law on Administrative Disputes

27. Article 1 of the Law on Administrative Disputes (OG FBiH Nos. 2/98 and 8/00) provides that the courts shall decide in administrative disputes on the lawfulness of second-instance administrative acts concerning rights and obligations of citizens and legal persons.

28. Article 22 paragraph 3 of the same Law provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time-limit, whether the appeal to it was against a decision or against the first instance organ's silence.

V. COMPLAINTS

29. The applicant alleges that he was unlawfully deprived of his property, that he was not given back his land and that the proceedings in his case were not conducted within a reasonable time. He asks the Chamber to order the respondent Party to award him 260,000 KM and, in addition, interest at the rate of 12% on this amount as of 1 January 1989.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

30. On 19 February 2003, the Federation of Bosnia and Herzegovina sent written observations on the admissibility and merits of the application. The respondent Party claims that the applicant received compensation as provided for in the judgment of the Basic Court II in Sarajevo of 27 January 1987. Furthermore, it suggests that the application be declared inadmissible *ratione temporis* as the complaints of the applicant relate to events taking place before 14 December 1995. Alternatively, the Federation proposes to declare the application inadmissible for non-compliance with the six-month rule, considering that the application was filed in 1998, whereas the decision on expropriation of 17 November 1985 and the decision of 1 July 1991, which rejected the applicant's request for de-expropriation, should be considered the final decisions upon which the applicant's complaints are based.

31. As regards the allegation that proceedings in the applicant's case have lasted for an excessive amount of time, the Federation claims that all administrative bodies and courts the applicant has turned to have dealt with his requests not only with great patience, but also within a reasonable time. As regards Article 1 of Protocol No. 1 of the Convention, the Federation points out

that its legal system, in particular Article 32 of the Law on Expropriation, strikes a fair balance between state interests and those of former owners, and that the proceedings in the applicant's case were conducted strictly according to law.

B. The applicant

32. The applicant claims that he did not receive fair compensation following the expropriation of his land and he maintains all his complaints.

VII. OPINION OF THE CHAMBER

A. Admissibility

33. 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 of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Concerning events before 14 December 1995

34. The Chamber notes that the applicant's complaints in relation to the expropriation of his land relate to proceedings before the organs of the then existing Socialist Republic of Bosnia and Herzegovina and thus to events which occurred before 14 December 1995, which is the date when the Agreement entered into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (see case no. CH/96/3, *Medan v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, decision on admissibility of 4 February 1997, Decisions on Admissibility and Merits 1996-1997). The Chamber must confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date (see case no. CH/96/30, *Damjanović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997).

35. Consequently, the applicant's complaints insofar as they relate to events before 14 December 1995 must be declared inadmissible *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement. Insofar as the applicant complains that his rights have been violated after the entry into force of the Agreement, his complaints are within the competence of the Chamber *ratione temporis* and are not incompatible with the Agreement.

2. Requirement to exhaust effective domestic remedies

36. The Chamber notes that after 14 December 1995, the applicant has repeatedly sought to rectify the expropriation of 1985 in de-expropriation proceedings. It is noteworthy that the Supreme Court of the Federation of Bosnia and Herzegovina dealt with the matter on four occasions, and three times, the Supreme Court returned the case to the administrative bodies for renewed consideration.

37. Furthermore, the Chamber observes that on 24 June 2002, the Federal Administration rejected the applicant's request to nullify the decision of the Republic Administration of 6 May 1986. However, this decision could be challenged in an administrative dispute, which the applicant decided not to do. The applicant has not stated the reason why he did not initiate such proceedings, in particular, he has not shown that this remedy was ineffective. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies in relation to his de-expropriation request. The Chamber therefore decides to declare this part of the application inadmissible.

38. As regards the applicant's complaint that the proceedings conducted in his case after

14 December 1995 have lasted for an unreasonable amount of time, the Federation of Bosnia and Herzegovina has not sought to claim that there is any remedy available to the applicant against the failure of the domestic administrative organs to issue a final decision in his proceedings, and the Chamber for its part is not aware of any such remedy.

39. Accordingly, the Chamber does not consider that there is any effective remedy available for the purpose of the applicant's complaint with regard to the length of proceedings that he should be required to exhaust. It follows that this part of the application will not be declared inadmissible due to non-exhaustion of domestic legal remedies.

3. Conclusion as to admissibility

40. No other grounds for declaring the case inadmissible have been put forward or are apparent. Accordingly, the application will be declared admissible insofar as it relates to events after 14 December 1995 with regard to the complaint that the proceedings in the applicant's case have not been conducted within a reasonable time. The remainder of the application will be declared inadmissible.

B. Merits

41. Under Article XI of the Agreement, the Chamber must next address the question whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina 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.

42. The Chamber will now examine the question whether there has been a violation of Article 6 of the Convention in that the administrative proceedings in the applicant's case have not been determined within a reasonable time. The relevant part of Article 6 paragraph 1 of the Convention provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time ..."

43. The Chamber notes that the applicant's complaint, as relates to the conduct of the domestic authorities and the way they have dealt with his case, concerns his request to reverse the expropriation of his land in 1985 through the renewal of proceedings or so-called de-expropriation. The European Court of Human Rights has held that also administrative proceedings can be viewed as a "determination of his civil rights", within the meaning of paragraph 1 of Article 6 of the Convention, if their outcome is decisive for a person's rights under private law (*Ringeisen v. Austria*, judgment of 16 July 1971, paragraph 94, Series A no. 13). Accordingly, the Chamber finds that the proceedings complained of by the applicant fall within the scope of paragraph 1 of Article 6 of the Convention.

44. In establishing the length of the proceedings, the Chamber has to determine the period of time relevant for the guarantee provided by paragraph 1 of Article 6 of the Convention. The Chamber reiterates that, considering its competence *ratione temporis,* it can assess the reasonableness of the length of proceedings only with regard to the period after 14 December 1995. It may, however, take into account at what stage the proceedings had reached and how long they had lasted before that date (see case no. CH/00/4295, *Osmanagić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 5 March 2002, Decisions January-June 2002, paragraph 49).

45. The Chamber recalls that on 25 February 1996, the Republic Administration complied with the Supreme Court judgment issued on 30 January 1992, in which the decision rejecting the applicant's request to renew proceedings was quashed. Thereafter, the administrative bodies have repeatedly rejected the applicant's claim or not reacted to his requests at all. The Chamber notes in particular that, contrary to the statement of the Federal Administration on 12 April 1999 (see paragraph 18 above), the applicant's de-expropriation request was not turned down in a final and binding way by the judgment of the Supreme Court of 18 March 1998, but that proceedings continued until a decision of

the Federal Administration was issued on 24 June 2002. The length of the proceedings to be considered by the Chamber thus covers more than six years, and they had already been pending for five years when the Agreement entered into force.

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

47. The Chamber deems that the mere facts underlying the expropriation of the applicant's land (see paragraph 8 above) are not exceedingly complex in nature. The same holds true for the legal provisions governing the de-expropriation of such land in case the expropriation purpose is not met (see paragraphs 23 and 24 above). However, there appears to be a material overlap and an inability of the domestic authorities to differentiate between or to deal with the applicant's multiple requests for renewal of the expropriation proceedings, for de-expropriation, and in relation to the compensation issue. In any event, the Chamber finds that the domestic procedural system facilitates the lodging of claims substantially identical to previously decided matters, thus not only giving the applicant the impression that he might obtain a favourable decision, but also hampering a final and binding settlement of the dispute at hand.

48. The Chamber also notes that on three occasions the applicant initiated an administrative dispute against decisions denying his request for de-expropriation, and every time the Supreme Court of the Federation of Bosnia and Herzegovina accepted the lawsuit and quashed the administrative decisions. This indicates either a systematic failure by the administrative organs to comply with the decisions of the Supreme Court, or a failure of the Supreme Court to issue judgments that guide the administration towards a correct solution of the applicant's case.

49. Accordingly, the Chamber cannot regard the period of time that elapsed in the instant case as reasonable. It follows that there has been a violation of the applicant's rights, as guaranteed by paragraph 1 of Article 6 of the Convention, to have his civil rights determined in a reasonable time.

VIII. REMEDIES

50. Under Article XI(1)(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 breaches of the Agreement which it has found.

51. In the present case, the Chamber finds it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of one thousand (1000) Convertible Marks ("*Konvertibilnih Maraka*"), 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, as compensation for non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

52. Additionally, the Chamber 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 as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

53. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as directed against the Federation of Bosnia and Herzegovina and relating to the length of the domestic proceedings conducted after 14 December 1995;

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

3. unanimously, that there has been a violation of the applicant's right to a determination of his civil rights 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, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, one thousand (1,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

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

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

Remedy: in accordance with Rule 63 of the Chamber's Rules of Procedure, as amended on 1 September 2003 and entered into force on 7 October 2003, a request for review against this decision to the plenary Chamber can be filed within **fifteen days** starting on the working day following that on which the Panel's reasoned decision was publicly delivered.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 March 2000)

Case no. CH/98/866

Nataša CAJLAN

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 February 2000 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. Anders MÅNSSON, 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 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina of Croat descent, to regain possession of an apartment in Banja Luka over which she, together with her husband, holds the occupancy right. She was evicted from it in 1995 by displaced persons of Serb origin. She has initiated judicial and administrative proceedings to regain possession of the apartment. In 1996 she was granted the occupancy right over a different, smaller, apartment by JP Telekom, which she still occupies. The relevant municipal authorities seek the eviction of the applicant from this second apartment.

2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 12 August 1998 and registered on the same day.

4. The applicant requested that the Chamber order the Republika Srpska as a provisional measure to take all necessary steps to prevent her eviction from the apartment she currently occupies, located at Sime Matavulja 10, Banja Luka. On 24 August 1998 the Chamber issued an order in these terms.

5. On 18 September 1998 the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits of the case. No such observations have been received. The Chamber also requested the applicant to submit certain further information relevant to her application, which she did on 24 September 1998.

6. On 20 November 1998 the applicant was requested to submit any claim for compensation or other relief she wished to make. These were received on 1 December 1998 and transmitted to the respondent Party on 8 December 1998. The respondent Party was requested to submit observations on the applicant's claim for compensation but did not do so.

7. On 13 March 1999 the Chamber considered the application and decided to request certain further factual information from the parties. The applicant's reply was received on 22 March 1999 and that of the respondent Party on 26 May 1999.

8. On 9 December 1999 and 7 February 2000 the Chamber considered the admissibility and merits of the application. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The applicant is a citizen of Bosnia and Herzegovina of Croat descent. The facts of the case as they appear from the applicant's submissions and the documents in the case-file have not been contested by the respondent Party and may be summarised as follows.

1. The first apartment

10. On 1 August 1973 the applicant's husband was allocated an apartment located at Relje Krilatice 7 in Banja Luka ("the first apartment") by the holder of the allocation right over it, JP Telekom, which was also his employer. On the same day he entered into a contract for the use of the apartment with the relevant housing company. Until 1994 the applicant lived in the apartment together with her husband, who is of Czech descent. He left for Germany in 1994. The applicant remained in Banja Luka, as she was undergoing treatment for a hip injury.

11. In August 1995 displaced persons of Serb origin from Glamoč entered into the apartment. The applicant states that she was unable to remain there as they threatened her and forced her to leave it. According to the applicant, they claimed that an official of the Republika Srpska had made a decision entitling them to enter the apartment. The applicant lived with friends in Banja Luka until she was allocated another apartment (see paragraph 17 below).

12. On 22 September 1997 the applicant initiated proceedings before the Court of First Instance ("*Osnovni Sud*") in Banja Luka against the occupants of the apartment, seeking to regain possession of it. These proceedings were registered at the court on 26 September 1997. The first hearing in the case was held on 24 September 1998. After this hearing, the court issued a procedural decision ordering the applicant to amend her complaint. The reason for this was that, as the applicant's husband was the registered holder of the occupancy right over the apartment, the proceedings should be brought by him. On 7 October 1998 the applicant submitted an amended complaint, naming herself and her husband as the plaintiffs and submitting a letter of authorisation from her husband for her to represent him in the proceedings. This was accepted by the court.

13. By a decision of 27 May 1999 the court rejected the applicant's complaint, finding itself incompetent to decide upon the matter as cases concerning return into possession of property were to be dealt with by the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission") established by Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

14. The applicant appealed against this decision to the Regional Court in Banja Luka. There has been no decision on this appeal to date.

15. On 16 August 1998 the applicant applied to the Secretariat for Housing Affairs in Banja Luka, requesting that the current occupants of the apartment be evicted. There has been no decision on this application to date. The applicant has not taken any legal steps against the failure of the Secretariat to decide upon her application.

16. In July 1999 the applicant applied to the Commission for the Accommodation of Refugees and Administration of Abandoned Property under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (see paragraphs 23-35 below) to regain possession of the apartment. No decision has been issued on this application to date. The applicant has not taken any legal steps against this failure.

2. The second apartment

17. On 12 December 1996 the applicant was allocated another apartment, located at Sime Matavulja 10 in Banja Luka, by JP Telekom. The applicant was unable to enter into a contract for the use of this apartment, as there is a dispute as to who is the holder of the allocation right over it.

18. On 31 July 1998 the Secretariat issued a decision declaring the applicant to be an illegal occupant of this apartment and ordering her to vacate it. The Secretariat stated that she had not been allocated the occupancy right over the apartment by the holder of that right and accordingly occupied the apartment illegally. The applicant at first refused to accept delivery of the decision. On 16 August 1998 the applicant appealed to the Ministry for Urbanism and Housing-Communal Affairs. On 25 September 1998 the Ministry refused her appeal on the ground that she had no standing to appeal against a decision which she had not received. The applicant subsequently accepted receipt of the decision of 31 July 1998.

19. On 22 September 1999 the primary school "Jovan Cvijić" initiated proceedings before the Court of First Instance in Banja Luka against JP Telekom, the applicant and another company. In these proceedings, the plaintiff claims that JP Telekom and the other company illegally entered into a contract for the sale of the apartment. The school claims that it, in fact, is the owner of the apartment. The applicant is named as a defendant as the plaintiff seeks her eviction from the apartment so that the school can gain possession of it. These proceedings are, according to the information available to the Chamber, still pending.

20. The applicant still occupies the second apartment and wishes to regain possession of the first apartment.

B. Relevant legislation

1. Constitution of the Republika Srpska

21. Article 121 of the Constitution of the Republika Srpska reads as follows:

> "The judicial function is performed by the courts. The courts are independent and decide upon the basis of the Constitution and laws.
>
> The courts protect human rights and freedoms, established rights and interests of legal entities and legality."

2. The Law on the Use of Abandoned Property

22. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96) regulated the use of property considered to be abandoned. To this end, it established Commissions for the Accommodation of Refugees and Administration of Abandoned Property. These Commissions were responsible for identifying property considered to be abandoned and allocating it to persons entitled under the law to occupy such property. It also sought to establish a mechanism for the return of abandoned property to its prewar owners or occupiers. This law was abrogated by the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (see paragraphs 23-35 below).

3. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

23. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; "the 1998 law"), as amended, establishes a detailed framework for persons to regain possession of property of which they have lost possession.

24. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

25. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as "temporary users") in order to allow the previous owner, possessor or user to return.

26. The relevant body of the Ministry for Refugees and Displaced Persons (i.e. the local Commission for the Accommodation of Refugees and Administration of Abandoned Property) shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the new law to be provided with alternative temporary accommodation. If it determines that this is the case, the Commission shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

27. Any failure of the Commission to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

28. Article 8 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Such claims may be filed with the

Commission. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

29. Article 9 states that the Commission shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

30. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Proceedings (see paragraphs 36-42 below) and treated as an expedited procedure.

31. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances, which shall be agreed upon by the Office of the High Representative. The Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

32. Article 12 requires that the decision of the Commission be delivered to the current occupants of the property concerned. An appeal may be lodged against a decision within fifteen days of its receipt. However, the lodging of an appeal does not suspend the execution of the decision.

33. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Annex 7 Commission. In the event that an application by a claimant has been rejected by the responsible body (i.e. the local Commission) on either formal or material grounds, the proceedings before the Commission may be suspended pending the final decision of the Annex 7 Commission, if the Annex 7 Commission so requests. Any decision of the Annex 7 Commission shall be enforced by the authorities of the Republika Srpska.

34. Article 26 states that claims for repossession of property may also be filed by persons whose property was reallocated pursuant to, amongst others, Article 17 of the Law on the Use of Abandoned Property.

35. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 - 11 of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

4. The Law on General Administrative Proceedings

36. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It establishes a detailed regime for the conduct of administrative proceedings. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Proceedings. In all other cases, the Law on General Administrative Proceedings applies.

37. Article 5 of the law states that organs conducting an administrative procedure shall act in such a manner as to enable the parties to the proceedings to realise their rights in the most efficient way possible, having regard both to the public interest and to the interests of others affected.

38. Article 8 sets out the general principle that before making a decision, the deciding organ must give the parties the opportunity to express their opinion on all relevant facts and circumstances. According to Article 10, the deciding organ is to act and decide upon the matter independently.

39. The procedure envisaged by the law may be briefly summarised as follows. Once an organ is seised of a matter, it shall conduct that procedure in accordance with the law. The deciding organ may receive evidence both by written submission and at an oral hearing. Chapter VI of the law allows for the issuance of deadlines at various stages of the procedure, which are to be adhered to by the person or persons subject to them, in order to ensure that the proceedings are conducted expeditiously.

40. In accordance with Article 135 of the law, all facts necessary for the taking of a decision must be obtained by the deciding organ prior to the taking of such a decision. Article 149 allows for the holding of hearings, if it is desirable for the better resolution of the issue. In certain defined cases (e.g. where expert evidence is to be taken), a hearing must be held.

41. Under Article 202 of the law, the deciding organ shall issue its decision on the basis of the facts ascertained in the proceedings before it. Articles 206-214 of the law set out the requirements for the form and content of rulings.

42. The law also provides for, e.g., appeals against decisions and enforcement of decisions.

5. The Law on Housing Relations

43. The Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 14/74, as amended) governs the rights and obligations of owners of the allocation right over socially owned property and of persons to whom such property is allocated for use.

44. Article 19 states that only one person may be the holder of the occupancy right over an apartment. In the event that a married person living with his or her spouse concludes a contract for the use of a socially-owned apartment, his or her spouse is also considered to be the holder of the occupancy right. In such a situation, if one of the spouses dies or permanently ceases to occupy the apartment, the other spouse becomes the sole holder of the occupancy right, unless otherwise specified by the present law. The law sets out a special regime dealing with who is to remain the occupancy right holder over an apartment in the event of divorce.

IV. COMPLAINTS

45. The applicant claims that her inability to regain possession of the first apartment involves violations of her right to a fair hearing within a reasonable time, as guaranteed by Article 6 paragraph 1 of the Convention, and her right to respect for her home, as guaranteed by Article 8 of the Convention. She also claims that she has been discriminated against in the enjoyment of these rights in contravention of Article 14 of the Convention. The Chamber considers that the case might also raise an issue under Article 1 of Protocol No. 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

46. The respondent Party has not made any submissions on the admissibility and merits of the application. It did provide certain factual information to the Chamber (see paragraph 7 above).

47. The applicant maintains her complaint. She claims that the court proceedings she initiated are ineffective and that, accordingly, she is not required to exhaust other remedies available in the legal system of the Republika Srpska.

VI. OPINION OF THE CHAMBER

A. Admissibility

48. 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.

49. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but 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 ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

50. The Chamber notes that the applicant initiated proceedings before the Court of First Instance in Banja Luka, seeking to regain possession of the first apartment. However, these proceedings were rejected by the court and the applicant's appeal is currently pending before the Regional Court (see paragraphs 13-14 above).

51. The Chamber has previously noted that the Supreme Court of the Republika Srpska has held that matters concerning abandoned property are within the sole competence of the Ministry, finding that such issues should be decided by an administrative procedure rather than by the courts (see cases nos. CH/98/659 *et al.*, *Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraphs 151–152, Decisions August-December 1999). Accordingly, having recourse to the courts does not appear to be a remedy at all.

52. The Chamber notes that the applicant has applied under the 1998 law to regain possession of the first apartment. She has not received a decision within the prescribed time-limit (see paragraph 16 above). The applicant has not taken any steps provided for by the law of the Republika Srpska, by way of administrative proceedings, against the failure of the authorities to decide upon her request to regain possession of the first apartment.

53. As the Chamber noted in its decision in *Eraković* (case no. CH/97/42, decision on admissibility and merits delivered on 15 January 1999, paragraph 40, Decisions January-July 1999) a remedy such as that provided for by the law applicable in the Federation of Bosnia and Herzegovina, analogous to the 1998 law in the Republika Srpska, could in principle qualify as an effective one. The Chamber finds that its analysis in that case applies equally to the 1998 law relevant to the present case.

54. In the *Eraković* case, the Chamber considered the factual background to the case in the context of its admissibility. It held that the circumstances of that case, including the failure to adhere to the relevant time-limits, meant that the applicant could not be required to exhaust any further remedy provided for by national law.

55. In the present case the Chamber notes that the applicant was forcibly and illegally evicted from the first apartment in 1995. She initiated court proceedings to regain possession of it in 1997. She could also have sought to regain possession under the Law on the Use of Abandoned Property (see paragraph 22 above), which was in force at that time. However, as the Chamber has previously held, that law was "ineffective and illusory in practice" (see *Pletilić and others*, sup. cit., paragraph 127).

56. Therefore, the applicant did not have any effective remedy available to her before the adoption of the 1998 law. The Chamber does not consider that the applicant should now be required to initiate administrative proceedings, which may not prove to be effective, against the failure of the authorities to decide upon her claim for repossession of the first apartment.

57. The Chamber finds, in the circumstances, that the requirements of Article VIII(2)(a) of the Agreement have been met.

58. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

59. Under Article XI of the Agreement the Chamber must address the question 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 6 of the Convention

60. The applicant complains of a violation of her right to a fair hearing within a reasonable time, as guaranteed by Article 6 paragraph 1 of the Convention. This provision reads 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 ...."

61. The Chamber recalls that it has previously held that a dispute concerning an apartment over which a person holds an occupancy right falls within the ambit of Article 6 paragraph 1 of the Convention (see, e.g., case no. CH/97/93*, Matić,* decision on admissibility and merits delivered on 11 June 1999, paragraph 80, Decisions January-July 1999).

62. The Chamber notes that the applicant initiated proceedings before the Court of First Instance in Banja Luka on 22 September 1997, seeking to regain possession of the first apartment. On 27 May 1999 the court declared itself incompetent to deal with the matter. It held that the matter should be dealt with by the Annex 7 Commission (see paragraph 13 above). The applicant's appeal against this decision is still pending before the Regional Court.

63. The Chamber notes that Article 121 of the Republika Srpska Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 21 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. The Chamber has previously found that, in the absence of a specific statement to that effect, the Law on the Use of Abandoned Property did not remove court jurisdiction over property that was considered to be abandoned (see *Pletilić and others,* sup. cit., paragraph 194). The Chamber considers that the same applies to the 1998 law, as it lacks a specific statement that the courts are incompetent to deal with such matters. Article 13 of the 1998 law allows for proceedings for the return of property before a Commission to be suspended in certain defined circumstances (see paragraph 33 above). It does not provide for the suspension of such proceedings before the courts in any circumstances.

64. Nevertheless, the practical effect of the standpoint of the courts in the Republika Srpska is that it is impossible for the applicant to have the merits of her civil action against the current occupants of the first apartment determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, there has been a violation of her right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

2. Article 8 of the Convention

65. The applicant also alleges a violation of her right to respect for her home, as protected by Article 8 of the Convention. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

66. The Chamber notes that the applicant lived in the first apartment without interruption from 1973 until August 1995, when she was forcibly and illegally evicted from it. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention. The Chamber therefore considers that the first apartment is the applicant's "home" for this purpose.

67. The applicant stated that the persons who evicted her allegedly claimed to have received a decision from an official of the Republika Srpska entitling them to occupy the apartment. Since she was, however, evicted from the apartment prior to the entry into force of the Agreement, the Chamber has no competence *ratione temporis* to examine that event.

68. As noted above (see paragraphs 12, 15 and 16), the applicant initiated judicial and administrative proceedings seeking to regain possession of the first apartment. However, these proceedings have been unsuccessful to date and she has not yet regained possession of that apartment.

69. Therefore, the applicant has been unable to regain possession of the first apartment due to the failure of the authorities of the Republika Srpska to deal effectively with her various applications in this regard which she commenced in September 1997. Therefore, the respondent Party is responsible for the interference with the right of the applicant to respect for her home.

70. The Chamber must therefore examine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention.

71. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", serve a legitimate aim and be "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied.

72. As the Chamber has noted in the context of its examination of the case under Article 6 of the Convention (see paragraph 62 above), the Court of First Instance in Banja Luka rejected the applicant's application to regain possession of her home, as it considered itself incompetent in such matters. The Chamber has found that this is not in accordance with the Constitution of the Republika Srpska. Accordingly, the failure of the court to decide upon the applicant's proceedings is not "in accordance with the law" as required by paragraph 2 of Article 8. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

73. Regarding the administrative proceedings initiated by the applicant, the Chamber notes that, in accordance with Article 9 of the 1998 law (see paragraph 29 above), the relevant authority is required to issue a decision on a request within 30 days of its receipt. The applicant filed her request in July 1999, some seven months ago. However, no decision has been issued yet. Accordingly, also the actions of the Commission are not "in accordance with the law".

74. In conclusion, there has been a violation of the right of the applicant to respect for her right to her home as guaranteed by Article 8 of the Convention.

3. Article 1 of Protocol No. 1 to the Convention

75. The applicant did not specifically complain that her right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention has been violated. The Chamber considers, however, that the case raises an issue under this provision, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

76. The Chamber notes that, in accordance with Article 19 of the Law on Housing Relations (see paragraph 44 above) the applicant is deemed to be, together with her husband, the holder of the occupancy right over the first apartment. The Chamber has previously held as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

> "...[A]n occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 [of Protocol No. 1]..."

77. Accordingly, the Chamber considers that the applicant's rights in respect of the first apartment constitute a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

78. The Chamber considers that the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of the first apartment constitutes an "interference" with her right to peaceful enjoyment of her possession. This interference is ongoing as the applicant still does not enjoy possession of that apartment.

79. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

80. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the failure of the authorities to enable the applicant to regain possession of the first apartment was not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated.

4. Discrimination

81. The applicant claimed that she had been a victim of a violation of Article 14 of the Convention, which guarantees freedom from discrimination in the enjoyment of the rights guaranteed by the Convention.

82. The applicant has not provided any evidence which would tend to indicate that she has been discriminated against in the enjoyment of any of her rights as protected by the Convention or the other international agreements listed in the Appendix to the Agreement. Nor can the Chamber of its

own motion find any such evidence. Accordingly, the Chamber does not consider it established that there has been any violation of the applicant's right to freedom from discrimination.

VII. REMEDIES

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

84. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain possession of the first apartment without further delay, and in any event no 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 order for provisional measures (see paragraph 4 above) would be lifted at the time of the applicant regaining such possession.

85. The applicant has claimed compensation of 20,000 Convertible Marks (*Konvertibilnih Maraka*). She requests this amount for her eviction from the first apartment, for the stress caused thereby and for movable property which was taken from her as a result of the eviction. She does not specify this property in detail, but makes reference to her daughter's piano.

86. Concerning the applicant's claim for compensation in respect of her eviction and consequent stress, the Chamber has held (see paragraph 67 above) that this event is outside its competence *ratione temporis*. In addition, the Chamber has previously held that a respondent Party cannot be held responsible for movable property taken by an illegal occupant (see case no. CH/96/17, *Blentić,* decision on compensation of 22 July 1998, Decisions and Reports 1998, paragraph 10). Accordingly, the compensation claim must be rejected in its entirety.

87. However the Chamber does consider it appropriate to award the applicant compensation in recognition of the mental suffering she undoubtedly underwent as a result of her inability to regain possession of her home. The Chamber, taking into account the fact that the applicant was allocated the second apartment, considers 1,000 Convertible Marks to be an appropriate amount.

VIII. CONCLUSIONS

88. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the impossibility for the applicant to have the merits of her civil action determined by a tribunal constitutes a violation of her right to effective access to court within the meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment at Relje Krilatice 7, Banja Luka, involves a violation of the applicant's right to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment at Relje Krilatice 7, Banja Luka, involves a violation of the applicant's right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it has not been established that the applicant has been discriminated against in the enjoyment of any of the rights guaranteed in the Agreement;

6. unanimously, to order the Republika Srpska, swiftly, and in any event not later than 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, to take all necessary steps to enable the applicant to regain possession of the apartment located at Relje Krilatice 7, Banja Luka;

7. unanimously, to withdraw the order for provisional measures of 24 August 1998 in the case as of the date the applicant regains possession of the apartment located at Relje Krilatice 7, Banja Luka;

8. unanimously, to order the Republika Srpska to pay the applicant, 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, 1,000 (one thousand) Convertible Marks as compensation for mental suffering sustained;

9. unanimously, to order that simple interest at an annual rate of four per cent will be payable on the amount awarded in conclusion 8 above after the expiry of the period set in that conclusion for the payment of such amount; and

10. unanimously, to order the Republika Srpska to report to it, within two weeks of the expiry of the time-limit referred to in conclusion 6 above, on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel