

# **DIGEST**

*Decisions on Admissibility and Merits*

1996 - 2002





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Sarajevo, 2003

## ACKNOWLEDGEMENTS

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This Digest of the case law of the Human Rights Chamber for Bosnia and Herzegovina is aimed at providing those who will take over the responsibility of human rights adjudication in Bosnia and Herzegovina, above all the ordinary courts, the Constitutional Court of BiH and the European Court of Human Rights, as well as the people of Bosnia and Herzegovina seeking justice against human rights violations, legal practitioners and researchers, with easy access to the Chamber's jurisprudence. The Digest includes all the decisions on admissibility and merits decided by the Chamber from 1996, when it was first constituted, through 2002. It does not include decisions on admissibility and merits issued during 2003 – the final year of the Chamber's existence. The hope is that a companion digest volume of decisions issued in 2003 will be published in the near future. This present Digest also will be published in the Bosnian language during 2004.

Many individuals contributed to the realisation of this Digest. In its early stages of conception, Therese Nelson, Executive Officer, was primarily responsible for the design, supervision and editing of the Digest. Sheri Rosenberg, an International Lawyer with the Chamber, later joined this effort. Brett Dakin, who served as an intern in Sarajevo during the summer of 2001, wrote and compiled the first half of the Digest. He was assisted in this task by Michael Gibson, Jamie Metz, Susanna Segulja and Gina Vetere, interns in the Washington, D.C. office of ABA/CEELI, under the supervision of Sarah Warner. Thereafter, Geert-Jan van den Hoek, who served as an intern in Sarajevo during the summer of 2002, took over the writing and cross-referencing of the Digest. During this time, under the direction of Manfred Nowak, the Digest was redesigned and new indexes were added. During its final year of production, Toby Cadman, an International Lawyer with the Chamber, took over the main responsibility for the Digest – writing summaries, cross-referencing the cases and generally following it through to completion. Jakob Möller invested many hours proofreading the summaries and made editorial changes to the final version. Finally, thanks are due to Erika and Norbert Paul Engel for providing publicity to the Chamber's jurisprudence by publishing this Digest in addition to the full text of several of the Chamber's decisions in the HRLJ.

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## INTRODUCTION BY MR. MANFRED NOWAK

### 1. Human Rights Protection under the Dayton Peace Agreement

After three and a half years of armed conflict, ethnic cleansing and genocide with roughly 250,000 people killed, 2.6 million people (almost 2/3 of the pre-war population) displaced and more than 20,000 people missing, the international community, with the Clinton Administration taking the lead, put an end to the armed conflict in Bosnia and Herzegovina (BiH) by forcing the main political players in the former Yugoslavia to agree on the **Dayton Peace Agreement** (DPA).<sup>1</sup> The DPA was negotiated and initialled at Wright-Patterson Air Force Base in Dayton, Ohio in November 1995 and signed in Paris on 14 December 1995. It consists of the General Framework Agreement for Peace in BiH (GFAP) and the eleven Annexes thereto, signed by Presidents Slobodan Milošević (Federal Republic of Yugoslavia – Serbia and Montenegro), Franjo Tuđman (Republic of Croatia) and Alija Izetbegović (Republic of BiH) and witnessed by the European Union (EU) and the five members of the Contact Group (France, Germany, Russian Federation, UK and US). On the basis of the DPA and UN Security Council Resolution 1031 of 15 December 1995, the international community launched the largest and most comprehensive peace-keeping and peace-building operation ever with some 60,000 troops under NATO command (IFOR), almost 2,000 UN civilian police (IPTF) and complex civilian components to be coordinated by the Office of the High Representative (OHR) under the supervision of the Peace Implementation Council (PIC). Human rights play a significant role in a collective effort to establish sustainable peace, and various international organisations (in particular the UN, OSCE, Council of Europe, and the EU) have been entrusted with different tasks of human rights monitoring, assistance and implementation.<sup>2</sup>

Annex 4 of the DPA contains a new **Constitution of Bosnia and Herzegovina**, which consists of the State of BiH and its two Entities, the Croat-Bosniak Federation of BiH (Federation) and the Republika Srpska (RS). The central government is however very weak and most of the essential state functions including the armed forces, the police, the judiciary, and tax authority rest with the two Entities. Human rights play a significant role in the constitution under Article II(2) which states “[t]he rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law”. Furthermore, under Article II(4) the enjoyment of the rights and freedoms provided for in 15 additional international and European human rights agreements shall be secured to all persons in BiH without any discrimination. Article II(1) also establishes, at the level of the constitution, the **Human Rights Commission for Bosnia and Herzegovina** as a national human rights institution. Further provisions on the functions and composition of the Human Rights Commission are laid down in Annex 6.

Annex 6 of the DPA is a special **Agreement on Human Rights** (hereinafter referred to as “the Agreement”). It reiterates in Article I the obligation of the three Bosnian Parties who are the signatories to Annex 6 (BiH, the Federation and RS) “to ensure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms” as laid down in the European Convention on Human Rights and further 15 international and European treaties. In order to assist the Bosnian parties “in honouring their obligations under this Agreement” the

<sup>1</sup> For the text of the DPA see 35 ILM (1996) 89. The DPA and other legal documents on BiH are published in Office of the High Representative (ed.), *Bosnia and Herzegovina – Essential Texts*, 3<sup>rd</sup> edition, Sarajevo 2000.

<sup>2</sup> On the human rights aspects of the DPA see, e.g., James Sloan, “The Dayton Peace Agreement: Human Rights Guarantees and Their Implementation”, 7 EJIL (1996) 207; Paul Szasz, “The Protection of Human Rights through the Dayton/Paris Peace Agreement on Bosnia”, 90 AJIL (1996) 301; Michael O’Flaherty/Gregory Gisvold (eds.), *Post-War Protection of Human Rights in Bosnia and Herzegovina*, The Hague/London/Boston 1998; Wolfgang Benedek et al. (eds.), *Human Rights in Bosnia and Herzegovina after Dayton – From Theory to Practice*, The Hague/Boston/London 1999; Manfred Nowak, “Lessons for the International Human Rights Regime from the Yugoslav Experience”, *Collected Courses of the Academy of European Law*, Vol. VIII, Book 2, 2000, 141 at 173 et seq.

**Commission on Human Rights** has been created which consists of an Ombuds-institution<sup>3</sup> and a human rights court called the Human Rights Chamber for BiH (hereafter referred to as “the Chamber”)<sup>4</sup>. The Commission is modelled to some extent on the former Strasbourg system for the implementation of the European Convention, i.e. the Ombudsperson playing the role of the former European Commission of Human Rights (screening individual applications by declaring them inadmissible, negotiating friendly settlements, writing reports with a legal opinion on alleged human rights violations and referring certain cases to the Court for final adjudication) and the Chamber playing the role of the European Court of Human Rights. The practice of Gret Haller, who served as the **Ombudsperson for Bosnia and Herzegovina** between 1996 and 2000, followed to much extent this model. There are, however, also important differences between Annex 6 and the former Strasbourg model which would have allowed the Ombudsperson to apply a less legalistic approach and to act as a genuine Ombuds-institution by focussing on the comprehensive investigative powers laid down in Articles V and VI of the Agreement and by negotiating solutions with the authorities concerned.<sup>5</sup> Gret Haller’s successor, the Swedish ombudsman Frank Orton, seemed more inclined to follow this model. In practice, a significant difference between the system of the European Convention, as applied until the entry into force of the 11th Additional Protocol (AP) in 1998, and that of the Commission under Annex 6 is that individual applicants have a right to directly apply to the Chamber. Since the procedure before the Ombudsperson turned out to be fairly lengthy, the compliance with her reports left much to be desired, and only relatively few cases were referred to the Chamber, many applicants finally decided to circumvent the Ombudsperson and directly address the Chamber. In other words, the Human Rights Commission for BiH, which had been designed as one national human rights institution with joint offices and staff and a clear division of labour based upon mutual cooperation, turned out to act as two separate institutions. This *de facto* separation has been legalised by the end of 2000 when the Office of the Ombudsperson has been transferred by a law imposed by the High Representative into a domestic institution at the level of the State of BiH (not, however, at the level of the constitution) whereas the Chamber’s mandate under Annex 6 has been extended until the end of 2003. The following observations will, therefore, only concentrate on the mandate, functions and practice of the Chamber.

## 2. Human Rights Chamber for Bosnia and Herzegovina

The Chamber is a special human rights court established by an international treaty as part of a national human rights institution in the sense of the Paris Principles,<sup>6</sup> the Human Rights Commission for BiH. Although the Commission is explicitly referred to in Article II(1) of the Constitution, its legal basis can be found primarily in Article VI of the GFA and in Annex 6 thereto. For a transitional period of five years, the Ombudsperson and the majority of the judges of the Chamber, pursuant to Articles IV(2) and VII(2) of the Agreement, had to be foreign citizens – but not citizens of any neighbouring state. At the same time, Article III(2) of the Agreement specified that the salaries and expenses of the Commission and its staff should have been determined jointly by the Bosnian Parties and should

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<sup>3</sup> The DPA uses the term Human Rights Ombudsman. Its first office holder, the Swiss diplomat Gret Haller, used the official title of Ombudsperson for BiH, and her successor Frank Orton (Sweden) changed the title to Ombudsman of BiH. In the following, the term Ombudsperson for BiH will be used.

<sup>4</sup> It appears from the travaux préparatoires of the DPA that the Chamber was intended as a permanent human rights court with international members for a transitional period. The term human rights court has been avoided for two reasons: one wished to avoid any confusion with the Human Rights Court of the Federation which had been envisaged in Section IV(c)(5) of the Constitution of the Federation, adopted in 1994 on the basis of the Washington Agreement ending the armed conflict between the Croats and Bosniaks, but which has never been established in practice; and the resistance of the Serb delegation against the title human rights court. See Gro Nystuen, *Conflicts between norms regarding ethnic discrimination in the Dayton Peace Agreement*, PhD thesis Oslo 2004.

<sup>5</sup> See, e.g., Jessica Simor, “Tackling Human Rights Abuses in Bosnia and Herzegovina: The Constitution is Up to It; Are its Institutions?”, 2 EHRLR (1997) 644; Donna Gomien, *The Human Rights Ombudsperson for Bosnia and Herzegovina*, in Gudmundur Alfredsson et al. (eds.), *International Human Rights Monitoring Mechanisms – Essays in Honour of Jakob Th. Möller*, The Hague/Boston/London 2001, 763.

<sup>6</sup> On the Paris Principles see the UN Commission on Human Rights Res. 1992/54 of 3 March 1992 and UN GA Res. A/RES/48/134 of 20 December 1993; Birgit Lindsnaes/Lone Lindholt/Kristine Yigen (eds.), *National Human Rights Institutions; Articles and working papers – Input to the discussions on the establishment and development of the functions of national human rights institutions*, Copenhagen 2001.

have been borne by BiH. The Chamber can, therefore, be characterised as a **judicial body sui generis**, having a legal basis in both constitutional and international law, but being neither a constitutional nor an international court.<sup>7</sup>

The Chamber was established in March 1996, and its mandate was terminated by 31 December 2003 pursuant to an Agreement of the Bosnian Parties of 25 September 2003, which had in fact been imposed by the international community.<sup>8</sup> The Chamber had its headquarters in the Presidency Building of BiH in Sarajevo and a regional office in Banja Luka. It was composed of **14 judges** who were appointed in accordance with the provisions of Article VII of the Agreement. On 15 March 1996, the Committee of Ministers of the Council of Europe, in accordance with its resolution (93) 6,<sup>9</sup> appointed eight international judges and designated the Danish Professor Peter Germer as the President of the Chamber. Soon afterwards the RS appointed the two Serb judges, and the Federation the two Croat and two Bosniak judges. After an initial meeting of the international members on the invitation of the Council of Europe in Strasbourg, the Chamber held its inaugural session in Sarajevo on 27 March 1996. Since then, it has met for one full week almost every month until its last plenary meeting on 5 December 2003, both as plenary Chamber and since April 1998 also in the composition of two Panels of seven judges each, as provided for in Article X(2) of the Agreement. After the resignation of Peter Germer on 30 June 1997 on the ground that neither BiH nor the international community (above all, the Council of Europe and the OSCE) were willing to assume financial responsibility for the Chamber, the Icelandic human rights expert Jakob Möller served as acting President. On 24 October 1997 the Committee of Ministers of the Council of Europe appointed the French judge Michèle Picard as the new President, and she served in this function until the termination of the Chamber's mandate. Although serious financial problems continued to hamper the proper functioning of the Chamber throughout the entire period, the PIC, on the initiative of the High Representative, in principle agreed that the EU and the US should bear the main responsibility for providing the financial resources to the Chamber. On 13 December 1996, the Chamber, after long negotiations, adopted its **Rules of Procedure** pursuant to Article X(2) of the Agreement, which have been amended several times.<sup>10</sup> These Rules are based on a first draft prepared by the Council of Europe, which in principle followed the model of the (then) European Commission and Court of Human Rights.

For the reasons stated above, the joint **facilities and staff** of the Commission, as envisaged in Article III of the Agreement, were never established. Various successive Registrars, partly seconded by the Council of Europe, served as heads of the Chamber's legal staff. At the time of its dissolution, the Chamber had a total of 55 Bosnian and international staff, who carried out their responsibilities in a highly competent and motivated manner under the professional leadership of Ulrich Garms as Registrar and Therese Nelson as Executive Officer.

### 3. Mandate and Practice of the Chamber

According to Article II(2) of the Agreement, the Chamber has two distinct competencies:

- to consider alleged or apparent **violations of human rights** as provided in the **European Convention** and its Additional Protocols
- to 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

<sup>7</sup> On the literature concerning the Chamber see the bibliography below.

<sup>8</sup> On the reasons for the dissolution of the Chamber and a legal analysis of this Agreement see section 4 below.

<sup>9</sup> Article 1 of Res (93) 6 of 9 March 1993 on "Control of respect for human rights in European States not yet members of the Council of Europe", which is explicitly referred to in Article VII(2) of the Agreement, reads as follows: "At the request of a European non-member state, the Committee of Ministers may, after consultation with the European Court and Commission of Human Rights, appoint specially qualified persons to sit on a court or other body responsible for the control of respect for human rights set up by this state within its internal legal system (hereafter called the "control body")." For the text of the resolution see 18 HRLJ (1997) 296.

<sup>10</sup> The text of the Rules of Procedure is published in the Chamber's Annual Reports and on the Chamber's website at [www.hrc.ba](http://www.hrc.ba). See also the Annex to the Digest below.

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minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in any of the **16 international agreements** listed in the Appendix.<sup>11</sup>

The Chamber is competent to consider such a **violation** if it is alleged or appears to have been committed **by any of the three Bosnian Parties** (State of BiH, Federation or RS), including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ. Consequently, the Chamber is not competent to consider violations allegedly committed by IFOR (or its successor SFOR), IPTF (or its successor, the EU Police Mission), the High Representative, OSCE or any other member of the international community. If a person is, e.g., excluded from participating in elections by the OSCE under Annex 3 or dismissed from office under the so-called “Bonn Powers” of the High Representative,<sup>12</sup> the Chamber is incompetent *ratione personae* to consider the case.<sup>13</sup> If the impugned act is, however, imposed by a Bosnian authority at the advice, instigation or under pressure from the international community, such as the termination of police officers decertified by IPTF<sup>14</sup>, the exclusion of a high ranking military officer from being a candidate in the elections by the Bosnian election commission on the basis of a decision removing him from service by SFOR,<sup>15</sup> or the execution of laws imposed by the High Representative<sup>16</sup>, the Chamber is competent *ratione personae* to decide the issue.

According to Article VIII(1) of the Agreement, the Chamber shall receive applications “by referral from the Ombudsman on behalf of an applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing”. Apart from one “**Inter-Entity application**” submitted by the Federation against the RS concerning responsibility for the failure to reinstate

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<sup>11</sup> The Appendix lists the following 16 “Human Rights Agreements”:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War and the 1977 Geneva Protocols I-II thereto
3. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto
4. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
5. 1957 Convention on the Nationality of Married Women
6. 1961 Convention on the Reduction of Statelessness
7. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
8. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
9. 1966 Covenant on Economic, Social and Cultural Rights
10. 1979 Convention on the Elimination of All Forms of Discrimination against Women
11. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
12. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
13. 1989 Convention on the Rights of the Child
14. 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
15. 1992 European Charter for Regional or Minority Languages
16. 1994 Framework Convention for the Protection of National Minorities

<sup>12</sup> The “Bonn Powers”, which have considerably increased the possibilities of the High Representative to solve legal and political disputes in BiH, derive from Article XI(2) of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997. For the text see OHR Essential Texts (supra note 1), 184 at 199. This publication also contains various decisions of the High Representative using the “Bonn Powers”.

<sup>13</sup> See, e.g., cases no. CH/98/230 *Suljanović* and CH/98/231 *Čišić and Lelić v. Bosnia and Herzegovina and the Republika Srpska*, decision on admissibility of 14 May 1998, case no. CH/98/1266 *Čavić v. Bosnia and Herzegovina*, decision on admissibility of 18 December 1998, cases no. CH/00/4027 and CH/00/4074, *Municipal Council of the Municipality of South-West Mostar v. the High Representative*, decision of 9 March 2000; and – for an overview of the Chamber’s case law on this question, case no. CH/01/7728 *V.J. v. Federation of BiH*, decision of 4 April 2003, paras. 111-122.

<sup>14</sup> See case no. CH/03/12932 *Džaferović v. Federation of BiH*, decision on admissibility of 3 December 2003.

<sup>15</sup> See case no. CH/02/12470 *Obradović v. BiH and Federation of BiH*, decision on admissibility and merits of 7 November 2003.

<sup>16</sup> See cases no. CH/97/60 et al., *Miholić & Others v. BiH and Federation of BiH*, decision on admissibility and merits of 7 December 2001, paras. 126-133.

displaced persons into their pre-war apartments in connection with a dispute about the exact location of the Inter-Entity Boundary Line near Sarajevo Airport,<sup>17</sup> the Chamber only received **individual applications** submitted by individual victims or legal entities, such as religious organisations (e.g. various cases concerning graveyards and the sites of mosques destroyed during the war submitted by the Islamic Community<sup>18</sup> or a case submitted by the Catholic Church<sup>19</sup>), associations of shareholders,<sup>20</sup> broadcasting stations<sup>21</sup> or similar associations. During the early years the **Ombudsperson** referred a comparatively small number of cases to the Chamber, either at an early stage of her investigation in accordance with Article V(5) or on the basis of a report after having concluded her examination of the case in accordance with Article V(7) of the Agreement. Thousands of cases were submitted by **family members on behalf of deceased or missing persons** relating to massacres and ethnic cleansing operations during the armed conflict committed primarily in towns and villages of the Eastern RS, such as Srebrenica, Žepa, Bratunac, Rogatica, Višegrad or Foča.<sup>22</sup>

The **admissibility criteria** in Article VIII(2) of the Agreement are similar to those in comparable human rights treaties, such as the European Convention or the first Optional Protocol to the International Covenant on Civil and Political Rights. The Chamber has, however, a somewhat broader margin of discretion than, for example, the European Court of Human Rights, in deciding “which applications to accept and in what priority to address them”. In view of the fact that in the early years, the domestic remedies were fairly ineffective or non-existent, the Chamber decided to apply the requirement of exhaustion of domestic remedies and submission of a case to the Chamber within six months from the date of the final domestic decision pursuant to Article VIII(2)(a) in a very flexible manner. After the courts appeared to become more effective and the Chamber better known to the public it started to apply a stricter standard in this respect. Since only very few human rights cases had been submitted to another international human rights body for international investigation or settlement, the Chamber almost never declared an application inadmissible on the grounds of *res judicata* or *lis alibi pendens* pursuant to Article VIII(2)(b) and (d). Similarly, actions taken by other Commissions established by Annexes of the DPA, such as the Commission for Real Property Claims (CRPC) under Annex 7 or the Commission to Preserve National Monuments under Annex 8, usually did not prevent the Chamber from examining these cases as the respective claims seemed to be

<sup>17</sup> Case no. CH/00/5738 *the Federation of BiH v. the Republika Srpska*, decision on admissibility of 8 April 2002.

<sup>18</sup> See, e.g., case no. CH/97/29 *Islamic Community in BiH v. the Republika Srpska (Banja Luka mosques case)*, decision on admissibility and merits of 11 June 1999; case no. CH/99/2177 *Islamic Community in BiH v. the Republika Srpska (Prnjavor graveyard case)*, decision on admissibility and merits of 11 February 2000; case no. CH/98/1062 *Islamic Community in BiH v. the Republika Srpska (Zvornik mosques case)*, decision on admissibility and merits of 9 November 2000; case no. CH/99/2656 *Islamic Community in BiH v. the Republika Srpska (Bijeljina mosques case)*, decision on admissibility and merits of 6 December 2000; case no. CH/00/4889 *Islamic Community in BiH v. the Republika Srpska (Jakeš graveyard case)*, decision on admissibility and merits of 12 October 2001; case no. CH/01/7701 *Islamic Community in BiH v. the Republika Srpska (Mrkonjić Grad mosque case)*, decision on admissibility and merits of 22 December 2003.

<sup>19</sup> See, e.g., case no. CH/02/9628 *Catholic Archdiocese of Vrhbosna v. Federation of BiH*, decision on admissibility and merits of 6 June 2003.

<sup>20</sup> See, e.g., cases no. CH/00/5134 et al., *Škrgić & Others (including the “Association for the Protection of Unemployed Shareholders of Agrokomerc”) v. Federation of BiH*, decision on admissibility and merits of 8 March 2002.

<sup>21</sup> See, e.g., case no. CH/01/7248 *Ordo RTV “Sveti Georgije” v. Bosnia and Herzegovina*, decision on admissibility and merits of 5 July 2002.

<sup>22</sup> See, e.g., case no. CH/99/3196 *Palić v. the Republika Srpska (Žepa)*, decision on admissibility and merits of 11 January 2001; cases no. CH/01/8365 et al., *Selimović & 48 Others v. the Republika Srpska (Srebrenica cases)*, decision on admissibility and merits of 7 March 2003; cases no. CH/01/7604 et al., *Ibišević & 1804 Others v. the Republika Srpska*, decision to strike out of 3 June 2003; cases no. CH/01/8569 et al., *Pašović & Others v. the Republika Srpska (Foča Missing Persons cases)*, decision on admissibility and merits of 7 November 2003; cases no. CH/02/8879 et al., *Smajić & Others v. the Republika Srpska (Višegrad Missing Persons cases)*, decision on admissibility and merits of 5 December 2003; cases no. CH/02/9358 et al., *Malkić & Others v. the Republika Srpska (Vlasenica Missing Persons cases)*, decision on admissibility and merits of 22 December 2003; cases no. CH/02/9851 et al., *M.Č. & Others v. the Republika Srpska (Rogatica Missing Persons cases)*, decision on admissibility and merits of 22 December 2003; cases no. CH/02/10235 et al., *Mujić & Others v. the Republika Srpska (Bratunac Missing Persons cases)*, decision on admissibility and merits of 22 December 2003.

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different.<sup>23</sup> Allegations of especially severe or systematic violations, such as torture, arbitrary executions, enforced disappearances, etc., and those founded on alleged discrimination, in particular in relation to the return of refugees and internally displaced persons, were given particular priority by the Chamber in accordance with Article VIII(2)(e).

The vast majority of the **more than 1,200 inadmissibility decisions**, which the Chamber has adopted until the end of its mandate in December 2003, are based on the grounds of the application being “manifestly ill-founded”, i.e. not sufficiently substantiated or not appearing to disclose any violation, or being “incompatible” with the Agreement pursuant to Article VIII(2)(c). In addition to incompatibility *ratione personae*, as indicated above, quite a few applications were declared incompatible *ratione materiae*, as the allegedly violated right was not a human right covered by the European Convention, or the applicants had claimed violations of human rights outside the scope of application of the European Convention (usually economic, social and cultural rights) without alleging discrimination in the enjoyment of such rights, as required by Article II(2)(b) of the Agreement.<sup>24</sup> Many applications have been declared inadmissible as incompatible *ratione temporis* when human rights violations during the armed conflict were brought before the Chamber. Since the DPA entered into force on 14 December 1995, the Chamber was precluded, under generally accepted principles of international law, to consider human rights violations which had occurred before this date. On the other hand, it soon turned out that many violations had their origin in events during the armed conflict but continued after the entry into force of the DPA. If a person had disappeared, e.g., during the armed conflict but was still seen alive after 14 December 1995, the Chamber was competent to decide the case.<sup>25</sup> Similarly, if persons had disappeared during the armed conflict and their relatives thereafter have unsuccessfully continued to pursue various actions aimed at receiving information from the respondent Parties about the fate and whereabouts of their loved ones, the right of these family members to be informed of the truth derived from the protection of family life under Article 8 of the European Convention might have been violated after 14 December 1995.<sup>26</sup> If a person had been dismissed during the armed conflict from his or her job or evicted from his or her house on ethnic grounds and took unsuccessful legal action for reinstatement, the Chamber was competent *ratione temporis* to consider violations committed after 14 December 1995 and usually took the earlier events into account as background information.<sup>27</sup> Similarly, if mosques had been destroyed during the armed conflict and the RS authorities prevented their reconstruction after 14 December 1995, the Chamber decided on these discriminatory practices towards the Islamic Community.<sup>28</sup>

Under Article VIII(3), the Chamber may decide to **strike out** an application on the ground

- that the applicant does not intend to pursue his or her application,
- that the matter has been resolved,
- or for any other reason established by the Chamber, it is no longer justified to continue the examination of the application.

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<sup>23</sup> See, e.g., case no. CH/97/29 *Islamic Community in BiH v. the Republika Srpska (Banja Luka mosques case)*, decision on admissibility and merits of 11 June 1999, paras. 137-141; case no. CH/98/756 *Đ.M. v. Federation of BiH*, decision on admissibility and merits of 14 May 1999; case no. CH/98/698, *Jusufović v. the Republika Srpska*, decision on admissibility and merits of 9 June 2000.

<sup>24</sup> See, e.g., case no. CH/01/6662 *Huremović*, decision on admissibility of 6 April 2001, paragraph 4, (right to housing); and case no. CH/01/7674 *Kunić & 104 Others*, decision on admissibility of 9 November 2001, paras. 20-22, (right to work).

<sup>25</sup> See, e.g., case no. CH/96/1 *Matanović v. the Republika Srpska*, decision on the admissibility of 13 September 1996; case no. CH/99/3196 *Avdo and Esma Palić v. the Republika Srpska*, decision on admissibility and merits of 11 January 2001, paras. 40-44.

<sup>26</sup> See, e.g., the cases cited in note 22 above, as well as case no. CH/02/9180 *Boško and Mara Jovanović v. Federation of BiH*, decision on admissibility and merits of 5 December 2003, paras. 71-72.

<sup>27</sup> See, e.g., case no. CH/97/67 *Zahirović v. Federation of BiH*, decision on admissibility and merits of 8 July 2000, paras. 104-108 and 120-132; case no. CH/02/12016 *Čengić v. the Republika Srpska*, decision on admissibility and merits of 10 October 2003, paras. 11, 117-119.

<sup>28</sup> See, e.g., case no. CH/97/29 *Islamic Community in BiH v. the Republika Srpska (Banja Luka mosques case)*, decision on admissibility and merits of 11 June 1999, and the other decisions cited to in note 22 above.

During the years, the Chamber has made increasing use of this provision. In many cases, the decisions are based on the applicants' withdrawal of the case or failure to respond to communications from the Chamber, which led to the conclusion that they did not intend to pursue the case. More difficult is the question whether the **matter** before the Chamber has been **resolved**. The majority of cases decided by the Chamber relate to efforts of displaced persons to regain possession of their houses and apartments, which they had been evicted from during ethnic cleansing operations in the course of the armed conflict. After many judgments of the Chamber finding violations of the rights to property and the protection of the home as well as after several amendments to discriminatory housing legislation imposed by the High Representative, the housing authorities gradually adopted a less discriminatory attitude toward minority returnees and started to implement the respective laws and decisions of the Commission for Real Property Claims (CRPC) under Annex 7, which had established in a binding manner who had been the pre-war owner or occupancy right holder of a given house or apartment. Since thousands of similar housing cases had been submitted to the Chamber, many applicants finally succeeded to regain possession of their houses and apartments while their cases were still pending before the Chamber. Whereas some applicants withdrew their respective applications, others wished to maintain their claims as their human rights in fact had been violated for many years, and they had suffered pecuniary and non-pecuniary damages during the time they were illegally prevented from returning to their pre-war homes. The Chamber, nevertheless, decided in most cases to strike out the applications as the main claim had in fact been resolved. It justified these decisions by its obligation under Article VIII(2)(e) to give priority to allegations of especially severe or systematic violations of human rights, by the fact that a large and further increasing number of unresolved cases were pending before it, and by the significant progress made in the implementation of the property and housing laws. Although these decisions might have led to injustices towards some of the applicants, the Chamber considered this approach of striking a fair balance between the interests of the individual applicants and the society as a whole to be justified under its general mandate to "decide which applications to accept".<sup>29</sup> In all the **roughly 1,000 strike-out decisions** adopted until the end of 2003 did the Chamber, however, ascertain that such result was consistent with the objective of respect for human rights, as required under Article VIII(3) of the Agreement.

The same requirement applies to the attempts of the Chamber to facilitate a **friendly settlement** in accordance with Article IX. Although the Chamber had made available its good offices to facilitate an amicable resolution of the issue in various cases,<sup>30</sup> it actually succeeded in only one early employment discrimination case in effecting such a resolution and publishing a respective report, which was transmitted, as required by Article IX(2), to the High Representative, the OSCE and the Council of Europe.<sup>31</sup>

Most inadmissibility and strike out decisions have been adopted without even transmitting the respective applications to the respondent Parties. If an application, after a first consideration by the Chamber, appears to raise an issue under the Agreement, it is transmitted to the respondent Party or Parties concerned with a request for written observations on admissibility and merits. Observations so obtained are communicated to the applicant for any written observations in reply. In order to clarify the facts and certain legal issues, both parties to the proceedings often have repeatedly been invited to submit further written observations. These **written proceedings**, which are based on the legal principles of procedural fairness, equality of arms and "*audiatur et altera pars*", sometimes lasted for several years. Although the **Rules of Procedure**, which were adopted by the

<sup>29</sup> See, e.g., case no. CH/99/2198 *Vujičić v. Federation of BiH*, decision to strike out of 10 October 2002; the Chamber's previous, different approach in this matter is set forth in case no. CH/99/2336 *S.P. v. Federation of BiH*, decision to strike out of 2 July 2001; for a case in which the Chamber decided to proceed to issuing a decision on the merits notwithstanding the applicants' reinstatement into possession of their apartments see case no. CH/00/6436 and 6486 *Krvavac and Pribišić v. Federation of BiH*, decision on admissibility and merits of 5 July 2002, paras. 46-54.

<sup>30</sup> See, e.g., case no. CH/97/46 *Kevešević v. Federation of BiH*, decision on the merits of 10 September 1998; case no. CH/02/9628 *Catholic Archdiocese of Vrhbosna v. Federation of BiH*, decision on admissibility and merits of 6 June 2003; case no. CH/02/12016 *Čengić v. the Republika Srpska*, decision on admissibility and merits of 10 October 2003.

<sup>31</sup> Case no. CH/97/35 *Malić v. Federation of BiH*, Report published on 25 May 1998.

Chamber following the model of the respective Rules of the European Commission and Court of Human Rights, in principle provide for separate proceedings on admissibility and merits, the Chamber, for reasons of efficiency, only in very few cases adopted a separate **decision declaring an application admissible**. In the great majority of admissible cases, the Chamber followed the practice of adopting only one decision on admissibility and merits. Until the end of its mandate in December 2003, the Chamber adopted more than 225 decisions on admissibility and merits and only some 15 separate decisions on admissibility followed by a decision on the merits only. Since the Chamber often joined several similar applications in one decision, these comparatively few decisions in fact resolved a much larger number of applications. In addition, the Chamber has developed the practice of deciding major legal issues concerning, for example, housing legislation, apartments of the former Yugoslav National Army (JNA), foreign currency savings, privatisation legislation, pension right issues or disappearances, in a selected number of “**lead cases**”. These decisions in fact had a direct impact on many thousands of similar cases, many of which are still pending before the Chamber and might be decided on the model of these “lead cases” or, if the matter will be resolved in the near future in a satisfactory manner, might be struck out. In most “lead cases” and other important cases, the Chamber held a **public hearing** in accordance with Article X(3) of the Agreement, summoned witnesses, invited the Ombudsperson, the High Representative, the OSCE and others to act as *amicus curiae*, and often also appointed experts to assist it in solving, for instance, difficult economic issues.

The Chamber’s **decisions on admissibility and merits** are final and binding judgments pursuant to Article XI(3) of the Agreement, which in principle follow the model of the judgments of the European Court of Human Rights. After an introduction and the description of the proceedings before the Chamber, the relevant facts, legal provisions, complaints and submissions of the parties are set out in detail. Unless the admissibility has been decided in a separate decision, the legal opinion of the Chamber first addresses relevant questions of admissibility and then the merits of the application. In most cases decided on the merits, the Chamber actually found one or more breaches of the human rights obligations under the Agreement, i.e. violations of human rights guaranteed by the European Convention or discrimination in the enjoyment of human rights enlisted in the European Convention or any of the other 15 treaties, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of all Forms of Racial Discrimination. In fact, the judgments of the Chamber address a **broad variety of human rights issues**, which reflect the reality in the post-conflict situation of BiH. Most cases concern housing and property issues as well as discrimination of ethnic and religious minorities and returnees in the enjoyment of various rights, such as the rights to work, fair trial, personal liberty and security, freedom of movement, freedom of religion, social security, pension rights, private and family life, and the protection of their home and possessions. Other important cases relate to the death penalty, arbitrary detention, torture and inhuman treatment, forced labour, enforced disappearances, expulsion and extradition, freedom of expression, religion and association, the right to a fair trial before independent and impartial courts, the right to education, as well as various economic issues arising from the freezing of foreign currency savings, the privatisation of socially owned companies or the non-enforcement of monetary judgments against the government on grounds of the difficult public budgetary situation.

If the Chamber finds a breach of the Agreement, it is under an obligation pursuant to Article XI(1) of the Agreement to address in its decision on the merits “what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures”. The power of the Chamber to **order appropriate remedies and reparation** to the victims goes far beyond the respective power of the European Court of Human Rights to afford just satisfaction under Article 41 of the European Convention and constitutes an important and innovative feature of the Agreement. Although the Chamber cannot directly annul a law, judgment or administrative decision of any Bosnian authority, it can order the respondent Party to repeal the impugned act. After initial hesitation to make full use of its power to order remedies, the Chamber gradually adopted a broader interpretation of Article XI. Wherever possible, it ordered measures of restitution, i.e. the annulment of the impugned administrative, judicial or legislative act, the release of a detainee or the reinstatement of the applicant into a pre-war home or employment. Often, orders are aimed at positive measures, such as: the granting of

permission to reconstruct destroyed mosques or to make available a suitable piece of land for this purpose where, for instance, another building had been erected on the site of a former mosque;<sup>32</sup> to amend the legislation governing the privatisation process in order to provide a clear legal framework for the compensation of holders of frozen foreign currency accounts; to retain lawyers and provide diplomatic and consular support to alleged terrorists, who were illegally deported to the US base at Guantanamo Bay;<sup>33</sup> and to fully investigate serious human rights violations, such as torture and enforced disappearances, with a view to bringing the perpetrators to justice and to report the results of the investigation to the victims<sup>34</sup>.

In most cases, the Chamber also ordered **compensation** for pecuniary damages, such as lost income or rent for alternative accommodation, and for moral damages, such as pain and suffering. In systematic disappearance cases during the armed conflict, the Chamber found violations of the right of family members to be informed about the truth and ordered, in addition to a thorough investigation of the events and the disclosure of all information to the families, a collective monetary compensation. In the case of the Srebrenica massacres in July 1995, the Chamber ordered the RS to pay a total of 4 million KM (more than 2 million EURO) to the Foundation of the Srebrenica-Potočari Memorial and Cemetery.<sup>35</sup> In other cases, it ordered 100,000 KM to be paid to the Institute of Missing Persons in order to conduct investigations and exhumations in specific regions.<sup>36</sup> Also in individual cases, the compensation amount often exceeded the sum of 10,000 KM. In some cases, the Chamber issued a separate decision on further remedies if it turned out that the original remedies had been insufficient or were simply ignored by the respondent Party.<sup>37</sup> In some earlier cases, it also issued separate decisions on compensation similar to the practice of the European Court of Human Rights.<sup>38</sup>

Article X(1) of the Agreement provides the Chamber with the explicit power to order **provisional measures**. This power was used primarily in housing cases in order to prevent the eviction of applicants and in death penalty cases to suspend execution of the sentence.<sup>39</sup> In urgent cases, the

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<sup>32</sup> Although restitution would have meant to order the destruction of the illegally built buildings, the Chamber refrained from ordering such measures: see, e.g., case no. CH/98/1062 *Islamic Community in BiH v. the Republika Srpska (Zvornik mosques case)*, decision on admissibility and merits of 9 November 2000, and, in particular, the decision on review of 2 October 2001; and case no. CH/01/7701 *Islamic Community in BiH v. the Republika Srpska (Mrkonjić Grad mosque case)*, decision on admissibility and merits of 22 December 2003.

<sup>33</sup> Cases no. CH/02/8679 et al., *Boudellaa et al.*, decision on admissibility and merits of 10 October 2002.

<sup>34</sup> See, e.g., case no. CH/98/1374 *Pržulj v. Federation of BiH*, decision on admissibility and merits of 13 January 2000; case no. CH/00/3642 *Aleksić v. the Republika Srpska*, decision on admissibility and merits of 8 November 2002; cases no. CH/01/8365 et al., *Selimović & 48 Others v. the Republika Srpska (Srebrenica cases)*, decision on admissibility and merits of 7 March 2003.

<sup>35</sup> Cases no. CH/01/8365 et al., *Selimović & 48 Others v. the Republika Srpska (Srebrenica cases)*, decision on admissibility and merits of 7 March 2003.

<sup>36</sup> Cases no. CH/01/8569 et al., *Pašović & Others v. the Republika Srpska (Foča Missing Persons cases)*, decision on admissibility and merits of 7 November 2003; cases no. CH/02/8879 et al., *Smajić & Others v. the Republika Srpska (Višegrad Missing Persons cases)*, decision on admissibility and merits of 5 December 2003; cases no. CH/02/9358 et al., *Malkić & Others v. the Republika Srpska (Vlasenica Missing Persons cases)*, decision on admissibility and merits of 22 December 2003; cases no. CH/02/9851 et al., *M.Č. & Others v. the Republika Srpska (Rogatica Missing Persons cases)*, decision on admissibility and merits of 22 December 2003; cases no. CH/02/10235 et al., *Mujić & Others v. the Republika Srpska (Bratunac Missing Persons cases)*, decision on admissibility and merits of 22 December 2003; and cases no. CH/02/12551 et al., *Husković & Others v. Federation of BiH (Mostar missing Persons cases)*, decision on admissibility and merits of 22 December 2003.

<sup>37</sup> Cases no. CH/99/2425 et al., *Ubović & Others v. Federation of BiH*, decision on further remedies of 6 December 2002; cases no. CH/00/5134 et al., *Škrgić & Others v. Federation of BiH*, decision on further remedies of 7 March 2003; cases no. CH/97/48 et al., *Poropat & Others v. BiH & Federation of BiH*, decision on further remedies of 4 July 2003.

<sup>38</sup> See, e.g., case no. CH/96/30 *Damjanović v. Federation of BiH*, decision on the claim for compensation of 16 March 1998.

<sup>39</sup> On the death penalty, see case no. CH/96/30 *Damjanović v. Federation of BiH*, decision on the merits of 8 October 1997; case no. CH/97/59 *Rizvanović v. Federation of BiH*, decision on admissibility and merits of 12

## Introduction

President of the Chamber or the respective Panel is authorised to order provisional measures when the Chamber is not in session.<sup>40</sup> In most cases, the respondent Parties complied with the provisional measures ordered by the Chamber. In the well-known “Algerian case”, four suspected terrorists were handed over to US forces in BiH who deported them to Guantanamo Bay despite an order for a provisional measure by the President of the Chamber to suspend the deportation until a respective decision of the Chamber.<sup>41</sup>

Most decisions of the Chamber were adopted unanimously. If no agreement could be reached, decisions were adopted by a simple majority, and in exceptional cases with the casting vote of the President.<sup>42</sup> According to Article XI(4) of the Agreement, any member is entitled to issue a **separate opinion**. In a considerable number of controversial decisions on the merits and also in certain inadmissibility and strike-out decisions, members of the Chamber made use of their right to issue a dissenting or concurring opinion.

At the beginning, the Chamber met only in plenary, i.e. in the full composition of 14 judges. In 1998, **two Panels** of seven judges each were established in accordance with Article X(2) of the Agreement. Most of the Chamber’s decisions were in the following adopted by these Panels. Although Article X(2) provides for review proceedings before the plenary Chamber upon motion of a party to the case or the Ombudsperson, the Chamber has decided, by following the model of Article 43 of the European Convention, to restrict the right to review to exceptional cases. Any **request for review** has first been referred to the Panel which did not take the decision in question, for recommendation to the plenary. The plenary Chamber was entitled to accept such request only if the case raised a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and if the whole circumstances justified reviewing the decision.<sup>43</sup> In practice, the Chamber rejected the vast majority of the 152 requests for review it received. If it accepted the request for review, it conducted further proceedings and issued a separate **decision on review**. Until the end of its mandate in December 2003, the plenary Chamber issued a total of 9 decisions on review, and in some cases reversed the decision of the respective Panel.<sup>44</sup> Three cases, in which a request for review had been accepted by the Chamber, have to be decided by its successor institution.

The decisions of the Chamber have been published<sup>45</sup> and forwarded to the parties concerned, the High Representative, the Secretary General of the Council of Europe and the OSCE, as provided for in Article XI(5) of the Agreement. The decisions are final and binding and the respondent Parties are under an obligation to fully implement them.<sup>46</sup> In the early years, the actual **compliance with the Chamber’s decisions** was fairly weak and constituted a major challenge to its effectiveness and credibility. With the gradual involvement of the High Representative as the main authority to ensure and coordinate the implementation of the civilian component of the DPA, the degree of compliance steadily increased. In some cases, including the Banja Luka mosques case, the High Representative even made use of his “Bonn powers”<sup>47</sup> to remove obstructing officials, including the Mayor of Banja Luka who had refused to comply with the Chamber’s order to permit the reconstruction of the

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June 1998; case no. CH/97/69 *Herak v. Federation of BiH*, decision on admissibility and merits of 12 June 1998.

<sup>40</sup> See Rule 36(2) of the Rules of Procedure.

<sup>41</sup> Cases no. CH/02/8679 et al., *Boudellaa et al.*, decision on admissibility and merits of 10 October 2002.

<sup>42</sup> See Rule 19(2) of the Rules of Procedure.

<sup>43</sup> Rule 64 of the Rules of Procedure.

<sup>44</sup> See, e.g., case no. CH/98/1062 *Islamic Community in BiH v. the Republika Srpska (Zvornik mosques case)*, decision on review of 2 October 2001; case no. CH/99/2150 *Unković v. Federation of BiH*, decision on review of 6 May 2002; and case no. CH/98/668 *Čebić v. Federation of BiH*, decision on review of 5 December 2003.

<sup>45</sup> The Chamber published its decisions in bound volumes and on the Internet ([www.hrc.ba](http://www.hrc.ba)). In some cases, the respondent Parties were ordered to publish the decision in their Official Gazettes: see, e.g., *Selimović & Others v. the Republic Srpska (Srebrenica cases)* decision on admissibility and merits of 7 March 2003. All decisions on the merits and on review were also delivered at public hearings held at the Cantonal Court in Sarajevo. Some decisions were also published in international journals, such as the HRLJ.

<sup>46</sup> Article XI(3) and (5) of the Agreement.

<sup>47</sup> On the “Bonn Powers” see *supra* note 12.

Ferhadija mosque.<sup>48</sup> On several occasions, the High Representative imposed new laws in line with the Chamber's jurisprudence, above all in property and housing cases. As a result of the pressure and monitoring of the international community, including IPTF and OSCE, most of the Chamber's decisions and orders, in particular provisional measures and compensation orders, have been complied with in practice. Less impressive is, however, the record of the respondent Parties with respect to legislative and structural changes required by the decisions of the Chamber, for example in the field of privatisation and economic reforms. In the summer of 2002, as part of the so-called "streamlining" of the activities of the international community in Bosnia and Herzegovina, the High Representative has delegated the function of closely monitoring the implementation of the Chamber's decisions to the OSCE, which has, however, less powers and facilities to enforce compliance than the High Representative.

#### 4. Gradual dissolution of the Chamber

Already in November 1996, only half a year after the establishment of the Chamber, did the so-called "**Venice Commission**" of the Council of Europe advocate for the first time a merger of the Chamber with the Constitutional Court of BiH.<sup>49</sup> The main arguments in favour of the merger were the partial **overlap of the competencies between the Chamber and the Constitutional Court** and the alleged transitional nature of the Chamber until accession of BiH to the Council of Europe and ratification of the European Convention.<sup>50</sup> Although the Constitutional Court has appellate jurisdiction over human rights issues and the competence to review the compatibility of laws with the European Convention under Article VI(3)(b) and (c) of the Constitution of BiH, the competence of the Chamber to decide on human rights matters is much broader. In practice, the partial overlap with the competencies of the Constitutional Court did not create any problems as both courts decided not to review each other's decisions.<sup>51</sup> The Constitutional Court deals primarily with general issues and disputes under constitutional law and has only received and decided few individual human rights complaints, whereas the vast majority of human rights victims addressed their complaints to the Chamber. In other words: Whereas the Constitutional Court and the Chamber over the years have developed a well-functioning division of labour and in practice have solved possible conflicts that might have resulted from their overlapping jurisdictions, the "Venice Commission" nevertheless, continued to pursue its idea of merging both institutions.<sup>52</sup> These endeavours were intensified with the accession of BiH to the Council of Europe in April 2002, its ratification of the European Convention and the efforts of the international community, above all the present US Government, to implement an early "exit strategy" for BiH.

<sup>48</sup> Case no. CH/97/29 *Islamic Community in BiH v. the Republika Srpska (Banja Luka mosques case)*, decision on admissibility and merits of 11 June 1999.

<sup>49</sup> European Commission for Democracy through Law, Opinion of 16 November 1996 on the constitutional situation in Bosnia and Herzegovina with particular regard to human rights protection mechanisms, 18 HRLJ 1997, 297 at 307. Although the "Venice Commission" has only an advisory role, the High Representative usually followed and implemented its opinions.

<sup>50</sup> On the accession of BiH to the Council of Europe see Manfred Nowak, "Is Bosnia and Herzegovina ready for membership in the Council of Europe? The responsibility of the Committee of Ministers and of the Parliamentary Assembly", 20 HRJL (1999), 285.

<sup>51</sup> See case no. CH/00/4441 *Sijarić v. Federation of BiH*, decision on admissibility of 6 June 2000; case no. CH/99/2327 *Knežević v. the Republika Srpska*, decision on admissibility of 11 October 2001; and for the practice of the Constitutional Court see the decisions in cases no. U 7/98, U 8/98, U 9/98, U 10/98, U 11/98, of 26 February 1999, all published in the Official Gazette of Bosnia and Herzegovina no. 9/99, and in English in the Bulletin of the Constitutional Court of BiH 1999/I, 77 et seq. See also Steiner, C./Ademovic, N., *Kompetenzstreitigkeiten im Gefüge von Dayton*, in: Graf Vitzthum, W./Winkelmann, I. (eds.), *Bosnien-Herzegowina im Horizont Europas*, Tübinger Schriften zum Staats- und Verwaltungsrecht, Band 69 (2003), 127-132.

<sup>52</sup> See, in particular, the Report of the Commission's Working Group on the Merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina, adopted at a meeting in Bled, Slovenia on 12 June 2001 (Coe Doc. CDL(2001)62 def.) and the "Proposal for a Law on the Merger of the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina", adopted by the Venice Commission on 20 October 2001 in Venice (CoE Doc. CDL-INF(2001)20).

This leads us to the second argument for the merger or dissolution of the Chamber, its **alleged transitional nature**. Article 5 of resolution 93(6) of the Committee of Ministers of the Council of Europe, which has been explicitly referred to in Article VII(2) of the Agreement<sup>53</sup> and which provides that the arrangements under this resolution “shall cease once the requesting state has become a member of the Council of Europe except as otherwise agreed between the Council of Europe and the state concerned”, has been invoked as an argument for the transitional nature of the Chamber. A closer look at the DPA, and Annex 6 in particular, shows, however, that the transitional nature only relates to the international members appointed by the Committee of Ministers of the Council of Europe, and not to the institution of the Chamber as such.<sup>54</sup> According to Article VII(3) and (4) of the Agreement, the members of the Chamber shall be appointed for a term of five years and may be reappointed. After the transfer described in Article XIV, members shall be appointed by the Presidency of BiH. A similar provision can be found in Article IV(2) with respect to the Ombudsperson. The provision on the transfer in **Article XIV** reads as follows:

“Five years after this Agreement enters into force, the responsibility for the continued operation of the Commission shall transfer from the Parties to the institutions of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as above.”

A systematic interpretation of these provisions, which is confirmed by the *travaux préparatoires*,<sup>55</sup> leads to the following conclusions. The Human Rights Commission for BiH has been established by the DPA<sup>56</sup> as a **permanent national human rights institution**. In fact, it has been recognised by the United Nations as one of the national human rights institutions established in accordance with the “Paris Principles”.<sup>57</sup> For the first five years, i.e. until 14 December 2000, the Commission had to function with a predominant international participation. This transitional period of five years could be extended, by an explicit agreement of the three Bosnian Parties (BiH, the Federation and RS), for another transitional period. If no such agreement was reached, the institutions of BiH were supposed to take over the responsibility for the “continued operation of the Commission”. This means that the Commission should have continued to operate as an institution of the State of BiH (i.e. not of the Entities) with an Ombudsman and judges of the Chamber to be appointed by the Presidency of BiH. The most appropriate manner of taking over the responsibility for the operation of the Commission would have been the adoption of an amendment to the Constitution in accordance with Article X of Annex 4,<sup>58</sup> which should have clearly spelled out the functions of the Ombudsman and the Chamber and which could have solved the remaining problem of the overlapping jurisdiction with the Constitutional Court of BiH. Since the constitutional entrenchment of the Commission can, however, also be derived from Article II(1) of Annex 4, the precise composition and functions of the Commission, which should, in principle, have continued in line with Annex 6, could also have been spelled out in an ordinary law.

In practice, the international community and the Bosnian Parties followed a different course of action which, in the opinion of the Chamber, is not in accordance with the respective provisions of the DPA. Since the proposals of the “Venice Commission” for a merger between the Chamber and the Constitutional Court were not yet developed to a stage where they could have been implemented in practice, the Bosnian Parties agreed on 10 November 2000, i.e. only one month before the expected

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<sup>53</sup> See supra note 9.

<sup>54</sup> See also the “Opinion on Legal Aspects of the Future of the Human Rights Chamber and its Proposed Merger with the Constitutional Court of BiH”, adopted by the Chamber on 7 November 2002 and distributed to the international community in BiH and to the Bosnian authorities.

<sup>55</sup> See Nystuen, supra note 4.

<sup>56</sup> Article VI of the GFA, Article II(1) of the Constitution of BiH in Annex 4 and the Human Rights Agreement in Annex 6.

<sup>57</sup> See the list of participants from the 6<sup>th</sup> International Conference on National Human Rights Institutions held in Copenhagen and Lund on 10-13 April 2002 which includes the Human Rights Ombudsman of BiH, Frank Orton, as representative of the Bosnian human rights institution. See also [www.nhri.net](http://www.nhri.net). On the Paris Principles see supra note 6.

<sup>58</sup> Article X(2) provides, *inter alia*, that no amendment to this Constitution may diminish any of the human rights and freedoms referred to in the Constitution.

transfer under Article XIV, to **extend the mandate of the Chamber** in the composition of eight international and six Bosnian judges for another three years, i.e. **until 31 December 2003**. This Agreement is in line with Article XIV, and all judges of the Chamber continued to serve the Chamber for this second transitional period.

The second part of the Commission, the Ombudsperson for BiH, was however “transferred” to the institutions of BiH by an ordinary “**Law on the Human Rights Ombudsman of Bosnia and Herzegovina**”,<sup>59</sup> which had been drafted by the Office of the Ombudsperson and, in the absence of the approval by the Parliamentary Assembly of BiH, imposed by the High Representative. Article 8 of this Law, which entered into force on 3 January 2001, provides for the appointment of **three Ombudsmen** by a two-thirds majority of both Houses of the Parliamentary Assembly, following a joint proposal by the Presidency of BiH. It is, therefore, obvious that the three Ombudsmen shall be appointed along ethnic lines. In fact, the three Ombudsmen (as expected, one Bosniak, one Bosnian Serb and one Bosnian Croat) were only appointed in November 2003, as the transitional provision of Article 41 of the Law provides for the appointment of a single **transitional Ombudsman**, by the Chairman in Office of the OSCE, for another transitional period until 31 December 2003. The former Swedish Ombudsman Frank Orton served as transitional Ombudsman of BiH for this three years period. The Ombudsman Law raises a number of difficult legal issues. In particular, it departs to a considerable extent from the functions of the Ombudsperson, as spelled out in Annex 6, and it does not specify at all, whether the new Ombudsman of BiH still represents the respective institution in Annex 6 and, if so, how its relationship with the Chamber as the second part of the Human Rights Commission should function. One might, therefore, conclude that the Commission ceased to exist on 31 December 2000, and that the Ombudsperson for BiH under Annex 6 was in fact replaced by a new institution with a different mandate, which is exclusively governed by the Law on the Human Rights Ombudsman of BiH. Whether this Law is compatible with Article II(1) of the Constitution of BiH and with Articles IV and XIV of Annex 6 is, however, doubtful. Article IV(2) of the Agreement provides, e.g., for only one single Ombudsman (instead of three Ombudsmen) who, after the transfer described in Article XIV, should have been appointed by the Presidency of BiH rather than by the Parliamentary Assembly.

In the case of the Chamber, the international community in 2003 neither opted for the proposed merger with the Constitutional Court nor for a transfer to the institutions of BiH nor for a further extension of the mandate as provided for in Annex 6, but rather for the “final disposition” of the Chamber.<sup>60</sup> On the proposal of the international community, in particular the Council of Europe, OSCE, EU and the US Government, the three Bosnian Parties on 22 and 25 September 2003 signed an “Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina”<sup>61</sup>, drafted by the OHR. According to this Agreement, the mandate of the Chamber shall end on 31 December 2003. The almost 9,000 cases which have been pending before the Chamber on 31 December 2003 shall be decided by a **Human Rights Commission within the Constitutional Court** consisting of five former members of the Chamber (two international and three Bosnian judges appointed by the President of the Constitutional Court), who shall operate on an interim basis from 1 January 2004 until “no later than 31<sup>st</sup> December 2004”. The President of the Constitutional Court, Mato Tadić, who has also served as Vice-President of the Chamber, appointed the Icelandic judge Jakob Möller as President of the Human Rights Commission.

“New cases regarding protection of human rights received by the Constitutional Court after 1 January 2004 shall be decided by the **Constitutional Court** in accordance with its jurisdiction pursuant to Annex 4”. This provision in paragraph 5 of the above mentioned Agreement seems to also refer to applications submitted to the Chamber after 31 December 2003. No efforts have, however, been undertaken to amend the Constitution of BiH in order to bring the human rights competencies of the Constitutional Court in line with the broader mandate of the Chamber. Instead, paragraph 14 foresees that the “relevant national authorities will, during the period commencing on 1 October

<sup>59</sup> Official Gazette of BiH 32/00.

<sup>60</sup> See, e.g., the “Status Report on Implementation of Annex 6 of the GFAP as Pertains to the Final Disposition of the Human Rights Chamber”, drafted by the OSCE Human Rights Department for submission to the Peace Implementation Council in February 2003.

<sup>61</sup> Not published in any Official Gazette.

2003 and ending on 31 December 2004, make possible the evolution of the current transition system into a sustainable system of protection of the human rights". In other words, the Agreement is based on the assumption that the five members of the Human Rights Commission within the Constitutional Court will be able to decide in one year more cases than the Chamber decided in almost eight years, that the Constitutional Court will be able to decide, in addition to its other tasks, most of the expected 100 to 200 new cases which the Chamber would have received on average per month, and that the remaining cases will be solved by the "relevant national authorities", presumably the courts of BiH and the two Entities. One does not have to be an expert on human rights in BiH to conclude that all three assumptions are, at least, unrealistic and that the above mentioned Agreement, which purportedly is based on Annex XIV of Annex 6, constitutes a manifest violation of this and other provisions of the DPA.

## 5. Final conclusions

After three and a half years of extremely brutal ethnic cleansing operations and armed conflict, which had led to the first genocide in Europe after the Nazi Holocaust, **the rule of law in BiH had collapsed**. Court buildings had been destroyed, judges had been killed or displaced for purely nationalistic, ethnic and religious reasons, the surviving or newly created courts were "ethnically clean" and used to provide "justice" according to the wishes of the ruling nationalistic parties and politicians. In addition, the judges and lawyers in this country had been educated in a Socialist system, where the administration of justice for a long period had been subjected to political interference and manipulation. The people in BiH had no trust in the rule of law or an independent judiciary, but were used to relying on the enforcement of their rights by political and (para)-military power holders.

The DPA, with all its weaknesses and shortcomings, had three major visions: to end the armed conflict and violent ethnic cleansing by providing military security; to **reverse the results of ethnic cleansing** by according absolute priority to minority returns and the fight against ethnic and religious discrimination; and to create a sustainable peace by a comprehensive **institution-building process** based on democratisation, the rule of law and human rights. With almost 60,000 heavily armed NATO-led troops in the country, which provided reliable military and increasingly also internal security, one of the major preconditions for a successful and sustainable peace-building process had been achieved in a comparatively short period after the end of the armed conflict. In the field of justice, two major tasks had to be addressed: to investigate the genocide, war crimes and crimes against humanity committed during the armed conflict and to bring the main perpetrators to justice; and to provide effective protection against human rights violations in the post-conflict period, which for the most part were a direct continuation and result of the ethnic cleansing policies of the past. The first task was primarily entrusted to the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague, the second task primarily to the **Human Rights Commission for BiH**, which according to Annex 6 of the DPA had been envisaged as a kind of **model for a modern national human rights institution** with a focus on the solution of individual complaints by both non-judicial and judicial means.

There is no doubt that the Commission could have functioned in a more efficient manner. The cooperation and division of labour between the Ombudsperson and the Chamber did not function as envisaged in the DPA, and the Commission as a common institution in fact never existed. The Chamber had a very slow start and was in the first years more occupied with solving its financial and logistical needs than with adjudicating human rights cases. On the other hand, the slow and cautious start of the Chamber, which needed more than half a year for adopting proper Rules of Procedure, also had certain advantages. Most importantly, some of the endless discussions on the Rules of Procedure which concentrated on surprising issues, such as the selection of the official and working languages of the Chamber, whether interpretation was necessary between the Bosniak, Croat and Serb languages, and to what extent the Bosnian judges were to be considered as "representing" their respective ethnic and religious communities, led to a thorough mutual understanding of different backgrounds, political and legal reasoning. This in turn had a major impact on successfully **reducing the impact of politics on judicial decision-making**. Although many of the "lead cases" decided by the Chamber dealt with highly sensitive political issues, the discussions among the

judges and the reasoning of the Chamber's decisions were primarily based on legal arguments, and the vast majority of the decisions were finally adopted unanimously. This in itself constitutes a major achievement in a long-term judicial institution-building process.

Over the years, the Chamber became better known throughout the country and gained a reputation for providing independent justice to victims of human rights violations. During less than eight years of its existence, the Chamber has been seized with roughly 15,000 individual complaints, i.e. on average 2,000 per year. The statistical graph in the Annex<sup>62</sup> illustrates that the annual number of cases registered by the Chamber increased from a few hundred in the first years to a peak of more than 4,000 in the year 2002. Even in the year of its final "disposition", which had been a subject of intense discussions and speculations in the Bosnian media leading to uncertainty among the population about the chances and reasonableness of submitting new applications to the Chamber, more than 2,000 new cases had been registered. These statistics alone provide an impression about the **continuing need for an independent specialised human rights adjudication** and the trust, which the people of BiH had placed in the Chamber.

It is true that the Chamber, for many years, seemed to be unable to effectively deal with the growing workload, and its **backlog** in fact increased to more than 10,000 unresolved pending cases by the end of 2002. This might be explained, at least in part, by the practice of the Chamber to give priority to so-called "lead cases", which were very time consuming and statistically adjudicated only a few individual applications, but which, if properly implemented, had a major impact on many other cases that could later be decided on the basis of the earlier decisions or even struck off the list, as the major issue had been resolved by appropriate action of the Bosnian authorities. In the year of its dissolution, the Chamber, for the first time, was in a position to resolve more cases than the total amount of newly registered cases, and the backlog therefore decreased to less than 9,000 by the end of 2003. In other words, the Chamber has been dissolved at a time, when it had reached the highest level of statistical "efficiency", and when there was hope that the Chamber, with or without international members, would be able to substantially reduce its backlog and, thereby, speed up its proceedings.

Apart from the question whether December 2003 was the best time for dissolving some of the leading "common institutions" of the DPA in the field of the rule of law and human rights, most importantly the Commission for Real Property Claims (CRPC) established under Annex 7 and the Chamber, this unfortunate decision of the international community, in cooperation with Bosnian politicians, illustrates a much more **fundamental dispute about sustainable institution-building** in a post-conflict situation. While the DPA is based on the philosophy of long-term institution building with the initial assistance of the international community aimed at handing over the "ownership" of these institutions to the Bosnian authorities after a certain transitional period, the mainstream of the international community presently involved in BiH pursues an exit strategy aimed at dissolving these institutions on budgetary grounds and on the assumption that the situation of the rule of law has improved to an extent that the regular Bosnian authorities, above all the ordinary courts, were in a position to take over the responsibilities of the special (and allegedly transitional) institutions created by the DPA. The **United Nations**, and above all the High Commissioner for Human Rights who strongly supported the continued existence of the Chamber as a Bosnian institution,<sup>63</sup> pursues the policy of establishing effective national human rights institutions in all countries of the world, but with a particular priority in post-conflict situations. The **Council of Europe**, on the other hand, since the early years after the end of the armed conflicts, regarded the Chamber as a mere transitional institution which should be dissolved as soon as BiH would accede to the Council of Europe, ratify the European Convention on Human Rights and, thereby, become subject to the jurisdiction of the European Court of Human Rights. Rather than taking BiH, with a highest domestic human rights court directly applying the European Convention and the Strasbourg case law, as a model for new member States to avoid the Strasbourg Court from being overloaded by thousands of individual applications,<sup>64</sup>

<sup>62</sup> See graph below.

<sup>63</sup> See the letter of the Acting UN High Commissioner for Human Rights, Bertrand Ramcharan, addressed to the High Representative on 10 June 2003.

<sup>64</sup> The European Court of Human Rights is presently totally overburdened with many thousands of applications from citizens of the new member States, such as Poland and the Russian Federation, and the Committee of

## Introduction

the “Venice Commission” and the political bodies of the Council of Europe pursued a strategy, which without doubt will lead to a sharp increase of individual applications submitted to the European Court of Human Rights.

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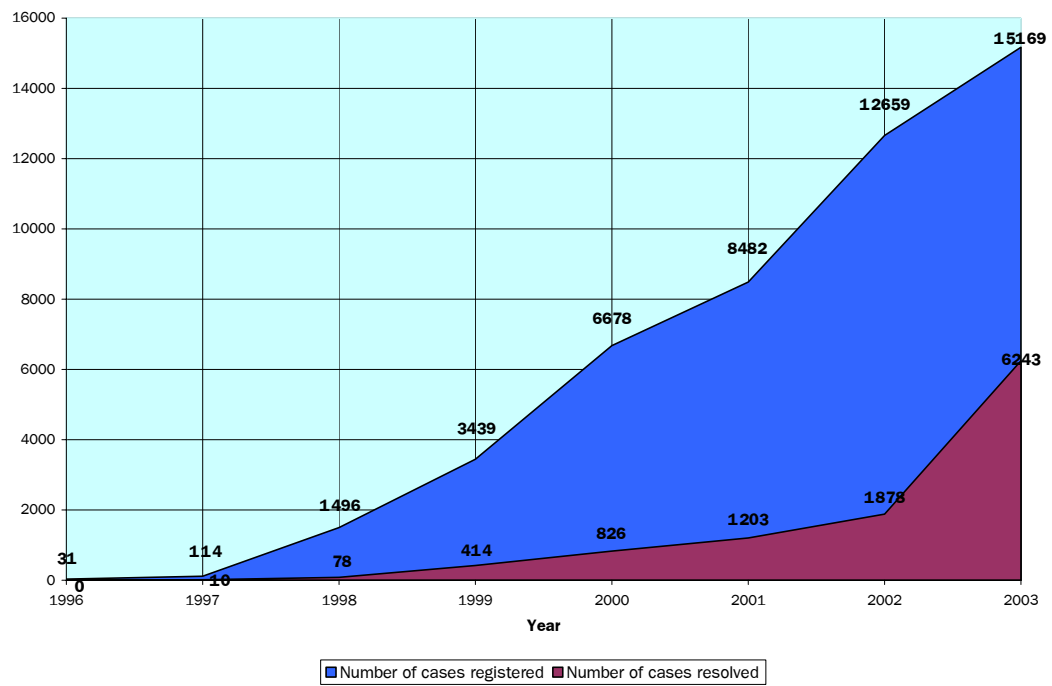
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Searchable Database of Chamber Decisions at [www.hrc.ba](http://www.hrc.ba)

**ANNEX III: STATISTICAL CHART****The Gap Between Cases Registered and Cases Resolved 1996 - 31 December 2003**



## MEMBERS OF THE CHAMBER

| Member                         | Country                |
|--------------------------------|------------------------|
| Ms. Michèle PICARD, President  | France                 |
| Mr. Mato TADIĆ, Vice-President | Bosnia and Herzegovina |
| Mr. Dietrich RAUSCHNING        | Germany                |
| Mr. Hasan BALIĆ                | Bosnia and Herzegovina |
| Mr. Rona AYBAY                 | Turkey                 |
| Mr. Želimir JUKA               | Bosnia and Herzegovina |
| Mr. Jakob MÖLLER               | Iceland                |
| Mr. Mehmed DEKOVIĆ             | Bosnia and Herzegovina |
| Mr. Giovanni GRASSO            | Italy                  |
| Mr. Miodrag PAJIĆ              | Bosnia and Herzegovina |
| Mr. Manfred NOWAK              | Austria                |
| Mr. Vitomir POPOVIĆ            | Bosnia and Herzegovina |
| Mr. Viktor MASENKO-MAVI        | Hungary                |
| Mr. Andrew GROTRIAN            | United Kingdom         |

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|--|------------------------|
| Mr. Adam ZIELINSKI, resigned March 1997  | Poland                 |
| Mr. Peter GERMER, resigned June 1997     | Denmark                |
| Mr. Vlatko MARKOTIĆ, deceased April 1999 | Bosnia and Herzegovina |



## ABBREVIATIONS

|                              |   |
|------------------------------|---|
| CERD                         | International Convention on the Elimination of All Forms of Racial Discrimination   |
| Chamber                      | The Human Rights Chamber for Bosnia and Herzegovina   |
| Convention                   | European Convention on Human Rights   |
| CRA                          | Communications Regulatory Agency  |
| CRPC                         | Commission for Real Property Claims of Displaced Persons and Refugees (established under Annex 7 to the General Framework Agreement for Peace in BiH) |
| Dayton Peace Agreement       | The General Framework Agreement for Peace in Bosnia and Herzegovina and its Annexes   |
| Federation (FBiH)            | Federation of Bosnia and Herzegovina  |
| Human Rights Agreement       | Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina  |
| ICCPR                        | International Covenant on Civil and Political Rights  |
| ICESCR                       | International Covenant on Economic, Social and Cultural Rights  |
| ICTY                         | International Criminal Tribunal for the Former Yugoslavia   |
| JNA                          | Yugoslav National Army  |
| JNA Pension (Fund)           | Pension from the Institute for Social Insurance of Army Insurees in Belgrade (Pension Fund)   |
| KM                           | Konvertibilnih Maraka, Convertible Marks  |
| new Abandoned Apartments Law | Law on the Cessation of the Application of the Law on Abandoned Apartments  |
| new Abandoned Property Law   | Law on the Cessation of the Application of the Law on the Use of Abandoned Property   |
| old Abandoned Apartments Law | Law on Abandoned Apartments   |
| old Abandoned Property Law   | Law on the Use of Abandoned Property  |
| Rules of the Road            | Cooperation on War Crimes and Respect for Human Rights (Item 5 of the Rome Agreement of 18 February 1996, Agreed Measures)                            |
| State (BiH)                  | Bosnia and Herzegovina  |



## **SUMMARIES OF THE DECISIONS**



|                          |  |
|--------------------------|--|
| <b>Case No.:</b>         | CH/96/1                                |
| <b>Applicants:</b>       | Josip, Bozana and Tomislav MATANOVIĆ   |
| <b>Respondent Party:</b> | Republika Srpska                       |
| <b>Date Delivered:</b>   | 6 August 1997 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

Proceedings before the Chamber were initiated by the Human Rights Ombudsperson. The three applicants are Josip and Božana Matanović, residents of Prijedor, the Republika Srpska, and their son Tomislav Matanović, a Roman Catholic priest in that town. The case concerns their alleged arrest and subsequent detention by local Bosnian Serb police officers. The applicants were allegedly arrested in August 1995 and, after a period under house arrest, taken to a police station in Prijedor in September 1995. They have been missing ever since. Father Matanović's name appeared on a list of prisoners offered by the authorities of the Republika Srpska in exchange for other prisoners dated 16 December 1995 and signed by the chairman of the Republika Srpska State Commission for the Exchange of War Prisoners. In December 1995 and again in March 1996 the authorities of the Republika Srpska offered to exchange the applicants for prisoners held by the Federation. However, the applicants were not exchanged or released.

### Admissibility (*Separate decision adopted 13 September 1996*)

The Chamber noted that the alleged victims were deprived of their liberty before 14 December 1995. However, insofar as the alleged victims continued to be arbitrarily detained and deprived of their liberty after 14 December 1995, the Chamber found that the case fell within its competence *ratione temporis*. Noting that the alleged victims had been held *incommunicado* from the time of their detention, including after 14 December 1995, the Chamber found that no effective remedies were available to the alleged victims. Thus the Chamber declared the case admissible.

Mr. Giovanni Grasso attached a concurring opinion in which he argued that it was necessary to stress that the documents submitted to the Chamber *prima facie* indicated that the three persons concerned had been arbitrarily detained after 14 December 1995 by the authorities of the respondent Party, and that the documents appeared to prove that they were held *incommunicado* and therefore that no effective remedies were available to them.

Mr. Peter Germer and Mr. Miodrag Pajić attached a dissenting opinion in which they argued that the Chamber should not and could not have decided on the question of the admissibility, given that direct contact between the Chamber and the respondent Party had not been established.

### Merits

#### Article 5 of the Convention

The Chamber considered that a presumption of responsibility of the respondent Party for the fate of the applicants since 14 December 1995 arose from the established fact that the applicants disappeared whilst under house arrest, combined with the official acknowledgement that since 14 December 1995 Father Matanović was held as a prisoner, the evidence that his parents were most probably in the same position, and the evidence suggesting that the authorities were aware that the applicants were detained after 14 December 1995. In the Chamber's opinion the respondent Party had failed either to provide a credible and substantiated explanation for the applicants' disappearance or to show that they had taken effective steps to investigate the matter. No

investigation appeared to have been made into the numerous reports suggesting that the applicants were arrested in August 1995 and kept in detention after that date. Thus the Chamber found that the respondent Party had, since 14 December 1995, failed to secure the applicants' rights to liberty and security of person as guaranteed by Article 5.

### **Remedies**

The Chamber ordered the Republika Srpska immediately to take all necessary steps to ascertain the whereabouts or fate of the applicants and to secure their release if still alive, and to report to it without delay and in any event before 6 October 1997 on the steps taken by it to comply with this order and on the results of any investigations carried out. The Chamber reserved the possibility of making further orders including in particular orders for monetary relief, and further reserved for future decision the question of further procedure in that regard.

### **Dissenting/Concurring Opinions**

Mr. Manfred Nowak attached a concurring opinion in which he argued that the Chamber should have found, in addition to a violation of Article 5, a violation of Article 3, because the prolonged period of *incommunicado* detention to which the applicants had been exposed constituted inhuman treatment, and of Article 2 paragraph 1 in conjunction with Article 1, because the enforced disappearance of the applicants for a period of one and a half years as from the entry into force of the the General Framework Agreement for Peace in Bosnia and Herzegovina ("Dayton Peace Agreement") constituted a grave threat to their right to life, one or more of the applicants might have died in detention, and the respondent Party had failed to secure and protect the applicants' right to life.

Mr. Miodrag Pajić and Mr. Vitomir Popović attached a dissenting opinion in which they argued that it had not been established that the applicants had been imprisoned by the authorities of the Republika Srpska and thus that the decision to find that the Republika Srpska committed human rights violations was premature.

*Decision adopted 11 July 1997*

*Decision delivered 6 August 1997*

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/96/2 et al.  |
| <b>Applicants:</b>         | Vlado PODVORAC et al.   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “16 JNA Cases”  |
| <b>Date Delivered:</b>     | 12 June 1998  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

All the applicants concluded purchase contracts under the Law on Securing Housing for the Yugoslav National Army (“JNA”) over apartments with the Federal Secretariat for National Defence and paid the purchase price due in 1992. Most applicants initiated court proceedings, seeking to establish that they were entitled to recognition as owners of the apartments. On 3 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law, ordering the 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. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law stating that contracts for the sale of apartments and other property concluded on the basis of *inter alia* the Law on Securing Housing for the JNA were invalid.

### **Admissibility**

Finding that the applicants did not have any effective remedies available to them and thus that the question of their non-exhaustion did not arise, the Chamber declared all the applications, including those of applicants who had not instituted any domestic proceedings, admissible against the State and the Federation.

### **Merits**

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

The Chamber found that the applicants had rights under their contracts which were “possessions” for the purposes of Article 1 of Protocol No. 1. The effect of the Decree of 22 December 1995 was to annul those rights, and thus each applicant was “deprived of his possessions” by the Decree. Neither respondent Party sought to justify the measures concerned in the case as “in the public interest” and “subject to the conditions provided for by law.” Therefore, the Chamber found that the applicants were made to bear an “individual and excessive burden” and that there had been a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The applicants’ court proceedings had been adjourned since shortly after the Decree of 3 February 1995 came into force, and had continued to be adjourned since the Dayton Peace Agreement came into force. Therefore, the Chamber found a continuing interference with the applicants’ right of access to court for the purpose of having their civil claims determined as guaranteed by Article 6. The Chamber also found that the proceedings had been prolonged beyond a “reasonable time” due to their adjournment, also in violation of Article 6.

### **Remedies**

The breaches of Article 1 of Protocol No. 1 arose from the laws referred to above. The State is responsible for having passed those laws, but the matters that they deal with are now within the

responsibility of the Federation, which recognizes and applies them. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicants' contracts. The Chamber also ordered the Federation to lift the compulsory adjournment of the court proceedings instituted by certain of the applicants and to take all necessary steps to secure the right of all the applicants to access to court. The Chamber reserved for further consideration the question whether any other remedies should be ordered against either respondent Party and allowed the applicants to submit any claim they wished to put forward in this respect and to submit within three months any claims for monetary relief.

*Decision adopted 14 May 1998*

*Decision delivered 12 June 1998*

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/96/3, 8 and 9  |
| <b>Applicants:</b>         | Branko MEDAN, Stjepan BASTIJANOVIĆ and Radosav MARKOVIĆ         |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 3 November 1997 (decision on the merits)                        |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants contracted in 1992 to buy from the JNA apartments which they occupied in Sarajevo. By Presidential Decree of 3 February 1995 the courts were ordered to adjourn all proceedings initiated by buyers of JNA apartments for the purpose of having themselves registered as owners in the land register. Furthermore, the purchase contracts were annulled by legislation passed shortly after the Dayton Peace Agreement entered into force (Presidential Decree of 22 December 1995, adopted as law on 18 January 1996). The applicants complained that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention and alleged various other violations of their human rights arising from related matters.

### Admissibility (*Separate decision adopted 4 February 1997*)

Insofar as the applicants complain of the continuing adjournment of their cases after 14 December 1995, the continuing absence of an effective remedy after that date and the alleged retroactive annulment of their contracts by a law passed since 14 December 1995, their complaints were within the Chamber's competence and were not incompatible with the Agreement *ratione temporis*. The Chamber found that no effective remedy was in practice available to the applicants, and declared the applications admissible.

### Merits

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

Although the applicants' contracts did not of themselves transfer to the applicants real rights of property in the apartments, they conferred on them valuable personal rights which in the Chamber's opinion constituted "assets" and were "possessions" for the purposes of Protocol No. 1. The Chamber concluded that the annulment of the applicants' contractual rights violated their rights under Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber found that there was a continuing interference with the applicants' right of access to court as guaranteed by Article 6. The Chamber found no justification for this state of affairs in light of its conclusion under Protocol No. 1 and found that there was a breach of Article 6 insofar as the compulsory adjournment of the applicants' cases had continued since 14 December 1995. The Chamber also found that in consequence of the adjournment the duration of the proceedings had been prolonged beyond a "reasonable time," resulting in a breach of Article 6.

#### *Responsibility of the Respondent Parties*

As for the Federation, the Chamber found that it was responsible for both the content and the application of legislation in force in its territory concerning the subject-matter of the applicants' complaints, even if the legislation was not passed by the institutions of the Federation. The Chamber further noted that the Parties are responsible under Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina ("Human Rights Agreement") for violations of human rights

committed at any level of governmental organisation, including the level of cantons and municipalities, and are also subject to the Chamber's jurisdiction in relation to such violations.

As for the State, the Chamber noted that at the time when the Decree in question was issued and adopted as law, the legislative organs provided for in the Constitutions of both the State and the Federation had not yet been established. The former institutions of the Republic, including the legislative institutions, continued to operate. Insofar as they did so, however, they functioned as institutions of the continuing State of Bosnia and Herzegovina, which is therefore responsible for their acts. Since institutions of the State were responsible for passing the legislation which annulled the applicants' contracts, the State was responsible for the aforementioned violations of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts. The Chamber also ordered the Federation to lift the compulsory adjournment of the court proceedings instituted by the applicants and to take all necessary steps to secure the applicants' right of access to court. The Chamber decided to reserve for further consideration the question whether any other remedies should be ordered against either respondent Party and to allow the applicants to submit any claim they wish to put forward in that respect.

### **Concurring Opinion**

Mr. Dietrich Rauschning attached a separate concurring opinion in which he elaborated on what he found to be the more compelling reasons for reaching the Chamber's conclusions.

*Decision adopted 3 November 1997*

*Decision delivered 3 November 1997*

### **DECISION ON CLAIM FOR COMPENSATION**

One applicant, Mr. Bastijanović, claimed compensation in respect of the following: the failure to allow him to be registered in the land register as the owner of the apartment which he had purchased; the continuing adjournment of the civil proceedings initiated by him on 10 February 1995; the suffering he was subjected to as a result of adverse comments made in the media; and the failure of the respondent Parties to comply with the Decision of the Chamber.

As for the failure by the Federation to allow him to be registered as the owner of the apartment, the Chamber noted that at no time was he threatened with being evicted, and decided that it was inappropriate to award the applicant any sums in respect of this matter. As for the adjournment of the proceedings, the Chamber noted that it only has jurisdiction *ratione temporis* in respect of matters arising after 14 December 1995, and decided that it was inappropriate to award the applicant any sums in respect of that adjournment. As for the comments made about him by the authorities in the media, the applicant did not provide any evidence to support this claim, so the Chamber considered it inappropriate to award the applicant any sums in this respect. As for the failure of the respondent Parties to implement the Decision of the Chamber, the Chamber found that it could not be stated that the applicant had suffered financial loss and thus that the question of compensation did not arise.

*Decision adopted 15 July 1998*

*Decision delivered 29 July 1998*

|                          |   |
|--------------------------|---|
| <b>Case No.:</b>         | CH/96/15                                  |
| <b>Applicant:</b>        | Ratko GRGIĆ                               |
| <b>Respondent Party:</b> | Republika Srpska                          |
| <b>Date Delivered:</b>   | 3 September 1997 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

This application was submitted to the Chamber by the German Section of the International Society for Human Rights, acting on behalf of the applicant, Father Ratko Grgić. The case relates to the alleged unlawful detention of the applicant. It is alleged that in 1992 he was arrested at his flat in Nova Topola, the Republika Srpska, where he was the Roman Catholic priest, by members of an armed organisation integrated into the military forces of the Republika Srpska. The arrest was allegedly carried out by several male persons wearing military uniforms with white waist and shoulder belts and emblems of the "White Eagles" militia. The applicant was driven away to an unknown destination, and remains missing today. However, he has not been registered as a prisoner by the State Commission for the Exchange of War Prisoners nor as a missing person.

### Admissibility (*Separate decision adopted 5 February 1997*)

The Chamber considered that the failure of the respondent Party to respond to the applicant's allegations increased the weight to be attached to them for the purpose of deciding whether a sufficient *prima facie* case had been made out. In the absence of such a response the Chamber did not consider that the allegation that Father Grgić had been in custody since 14 December 1995 should be declared manifestly ill-founded on the ground that it was unsubstantiated. Thus the Chamber declared the case admissible insofar as it related to the allegation that Father Grgić had been detained since 14 December 1995.

### Merits

The Chamber first recalled that it had declared the application admissible only insofar as it relates to the allegation that Father Grgić has been detained since 14 December 1995. The Chamber could therefore only find that the respondent Party had breached its obligations under the Human Rights Agreement if there were evidence before it which showed that the applicant had been unlawfully detained, or that his rights had otherwise been infringed, at some time after 14 December 1995. In contrast to *Matanović*, the Chamber noted that in this case there was no concrete information or evidence which could show that the applicant had been in detention at any time after his arrest in 1992. The only evidence related to the alleged arrest and abduction of the applicant, which is said to have occurred over three years before the Dayton Peace Agreement came into force. Having regard to the background of war and inter-communal strife which prevailed during that period, the Chamber held that such evidence would not of itself be sufficient to support the conclusion that the applicant had remained in detention after the Dayton Peace Agreement came into force, and thus that there had been no violation of the Human Rights Agreement.

### Dissenting Opinion

Mr. Vlatko Markotić and Mr. Želimir Juka attached a dissenting opinion in which they recalled that the Chamber had found a violation on similar facts in *Matanović*. They argued that the burden of proof regarding the applicant's alleged continuing detention was not only on the applicant, but that the respondent Party was obliged to provide evidence that the victim had been liberated. Here, they noted that the respondent Party had failed to fulfill this obligation, and that it was absurd to require

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the victim to provide evidence of his continuing detention. Thus the Chamber should not have concluded that there had been no violation.

*Decision adopted 5 August 1997*

*Decision delivered 3 September 1997*

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| <b>Case No.:</b>         | CH/96/17         |
| <b>Applicant:</b>        | Mehmed BLENTIĆ   |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 3 December 1997  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, and his wife were forcibly evicted from their privately owned house in Banja Luka, by a Mr. D.V., a Serb refugee, in September 1995. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which ordered the eviction of Mr. D.V. Several attempts were made to execute the Court's decision but without results because the police did not take any action to assist court officials.

### **Admissibility**

The Chamber found that use of the domestic remedy available to the applicant, even if successful, would not have remedied his complaint insofar as it related to the failure of the authorities to enforce the judgment during the period to date. Thus the Chamber concluded that the application should be accepted as admissible and examined on its merits insofar as it related to violations of the applicant's human rights which were alleged to have occurred since 14 December 1995.

### **Merits**

#### *Article 8 of the Convention*

Noting that the obligation effectively to secure respect for a person's home implies that there must be effective machinery for protecting it against unlawful interference of the kind which the applicant has suffered, the Chamber found that the police of the respondent Party gave no assistance to court officials in repeated attempts to enforce the order of the court for the eviction of the unlawful occupant and tolerated repeated obstruction of the officials in the execution of their duty. Furthermore no attempt was made to prosecute those responsible for obstructing the execution of the order of the court, although this would have been possible under domestic law. Thus there was a violation of Article 8.

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

The Chamber found, for the same reasons as given in the context of its examination of the case under Article 8, that the failure of the authorities to take the necessary measures to enforce the court order obtained by the applicant involved a failure effectively to secure his right to peaceful enjoyment of his possessions, and thus that there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber found that the police had been passive despite the obligation on them to assist in the execution of the court decision, and that the inertia of the competent authorities thus involved a breach of the applicant's right to a determination of his civil rights within a "reasonable time" under Article 6.

## **Remedies**

The Chamber ordered the Republika Srpska to take effective measures to restore to the applicant possession of the house. The Chamber reserved to the applicant the right to apply to it for any monetary relief or other redress he wished to claim.

*Decision adopted 5 November 1997*

*Decision delivered 3 December 1997*

## **DECISION ON CLAIM FOR COMPENSATION**

The applicant alleged that the person occupying his house removed a number of his possessions and claimed compensation under this head. The applicant also claimed pecuniary damage in relation to rent paid by him for the duration of the eviction. The Chamber found that the alleged loss of moveable property was not directly caused by the Republika Srpska or any person acting on its behalf but by the illegal occupant. The Republika Srpska could not therefore be held responsible for it. The Chamber found a causal link between the non-execution of the judgment and the need for the applicant to rent an apartment, and that the Republika Srpska was responsible for the damage suffered by the applicant in this respect. Thus the Chamber ordered the Republika Srpska to pay the applicant KM 3,750 for rent paid.

*Decision adopted 14 July 1998*

*Decision delivered (by notification in writing) 22 July 1998*

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|--------------------------|---------------------------------------|
| <b>Case No.:</b>         | CH/96/21                              |
| <b>Applicant:</b>        | Krstan ČEGAR                          |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina  |
| <b>Date Delivered:</b>   | 6 April 1998 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

Mr. Čegar is a citizen of Bosnia and Herzegovina of Serb descent and a resident of Mišin Han, a suburb of Banja Luka. Before the war he lived in the town of Glamoč, which now lies within the Federation. On 1 June 1996 Mr. Čegar went by car to visit his former house in Glamoč but left after finding it destroyed. He was stopped just outside Glamoč and arrested by Bosnian Croat police. Mr. Čegar's car, trailer and a number of agricultural implements and other items were seized, and Mr. Čegar was detained. He was informed that he was being held so that he could be exchanged for prisoners held by Republika Srpska authorities. Mr. Čegar was released on 16 July 1996. Mr. Čegar's car and trailer were returned to him following the intervention of the international Implementation Force (IFOR). The other items that had been seized were not returned.

### Admissibility (*Separate decision, adopted 11 April 1997*)

Noting that there was no "effective remedy" available to the applicant, the Chamber declared the application admissible.

### Merits

#### *Article 5 of the Convention*

The Chamber held that the arrest and detention of Mr. Čegar for the purpose of exchanging him for prisoners held by the Republika Srpska constituted a violation of his right to freedom from arbitrary detention under Article 5 paragraph 1. The Chamber held that the failure of Federation authorities to inform Mr. Čegar of the reasons for his arrest or of any charges against him was a violation of his right to be given such information "promptly" in accordance with Article 5 paragraph 2. Not only was Mr. Čegar not informed of the reasons for his arrest and detention until he was told, more than two days after his arrest, that he was being held for the purpose of exchange, but he was not informed of any legal grounds for his detention at all. Next the Chamber found that Mr. Čegar had not been able to take proceedings by which the lawfulness of his detention would be decided speedily by a court and his release ordered if the detention was not lawful, in violation of Article 5 paragraph 4.

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

The Chamber found that the Federation had no justification for seizing Mr. Čegar's possessions. Accordingly, the authorities' failure to return Mr. Čegar's agricultural implements and other items seized at the time of his arrest constituted a violation of his right to the peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

### Remedies

The Chamber ordered the Federation to pay to Mr. Čegar the sum of DEM 8,500 as compensation for pecuniary and non-pecuniary damages.

*Decision adopted 20 February 1998*

*Decision delivered 6 April 1998*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it challenged the Chamber's decision on the basis that the applicant had failed to exhaust domestic remedies; that the Chamber's determination of the existence and amount of damages was not in accordance with domestic or international law; and that the amount of compensation was excessive. Noting that the Human Rights Agreement and the Chamber's Rules of Procedure do not provide for the review of decisions made by the plenary Chamber (such as the Decision on Admissibility and the Decision on the Merits in this case), the Chamber rejected the request for review.

*Decision adopted 15 July 1998*

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| <b>Case No.:</b>           | CH/96/22  |
| <b>Applicant:</b>          | Milivoje BULATOVIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 7 November 1997 (decision on the merits)                        |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant contracted in 1992 to buy from the JNA an apartment which he occupied in Sarajevo. By Presidential Decree of 3 February 1995 the courts were ordered to adjourn all proceedings initiated by buyers of JNA apartments for the purpose of having themselves registered as owners in the land register. Furthermore, the purchase contracts were annulled by legislation passed shortly after the Dayton Peace Agreement entered into force (Presidential Decree of 22 December 1995, adopted as law on 18 January 1996). The applicant complained that the annulment of his contract violated his property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention and alleged various other violations of his human rights arising from related matters. The applicant also complained that he was threatened with eviction from his apartment under legislation relating to abandoned apartments.

### Admissibility (*Separate decision adopted 10 April 1997*)

Insofar as the applicant's complaints arose from the alleged retroactive nullification of his contract for the purchase of his apartment by the December 1995 Decree and the continuing compulsory adjournment of the court proceedings instituted by the applicant, they raised issues which were within the Chamber's competence *ratione temporis*. Finding that no "effective remedy" was available to the applicant, the Chamber declared the application admissible against both respondent Parties.

### Merits

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

Although the applicant's contract did not transfer to him real rights of property in the apartment it conferred on him valuable personal rights which in the Chamber's opinion constituted "assets" and were "possessions" for the purposes of Protocol No. 1. The Chamber concluded that the annulment of the applicant's contractual rights violated his rights under Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber found that there was a continuing interference with the applicant's right of access to court as guaranteed by Article 6. The Chamber found no justification for this state of affairs in light of its conclusion under Protocol No. 1 and found that there was a breach of Article 6 insofar as the compulsory adjournment of the applicant's case had continued since 14 December 1995. The Chamber also found that in consequence of the adjournment the duration of the proceedings had been prolonged beyond a "reasonable time," resulting in a breach of Article 6.

#### *Responsibility of the Respondent Parties*

As for the Federation, the Chamber found that it was responsible for both the content and the application of legislation in force in its territory concerning the subject-matter of the applicant's complaints, even if the legislation was not passed by the institutions of the Federation. The Chamber further noted that the Parties are responsible under the Human Rights Agreement for violations of human rights committed at any level of governmental organisation, including the level of cantons and municipalities, and are also subject to the Chamber's jurisdiction in relation to such violations.

As for the State, the Chamber noted that at the time when the December 1995 Decree was issued and adopted as law, the legislative organs provided for in the Constitutions of both the State and the Federation had not yet been established. The former institutions of the Republic, including the legislative institutions, continued to operate. Insofar as they did so, however, they functioned as institutions of the continuing State, which is therefore responsible for their acts. Since institutions of the State were responsible for passing the legislation which annulled the applicant's contract, the State was responsible for the aforementioned violations of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicant's contract; to lift the compulsory adjournment of the court proceedings instituted by the applicant and to take all necessary steps to secure the applicant's right of access to court; and not to evict the applicant from the apartment occupied by him. The Chamber reserved to the applicant the right to apply to it for any monetary relief or other redress he wished to claim.

### **Concurring Opinion**

Mr. Giovanni Grasso, Mr. Želimir Juka, Mr. Vlatko Markotić, Mr. Jakob Möller, Mr. Manfred Nowak and Mr. Vitomir Popović attached a concurring opinion in which they argued that the threat of eviction of Mr. Bulatović constituted a violation of Article 8 in addition to the violation of the Article 1 of Protocol No. 1.

*Decision adopted 3 November 1997*

*Decision delivered 7 November 1997*

### **DECISION ON CLAIM FOR COMPENSATION**

The applicant claimed compensation in respect of the following: the failure by the Federation to allow him to be registered in the land register as the owner of the apartment; the continuing adjournment of the civil proceedings initiated by him on 21 October 1994; the declaration by authorities of the Federation that his apartment was abandoned and the failure to supply him with a copy of such decision; and the attempts by the Federation to evict him.

As for the first claim, the Chamber noted that at no time did the applicant seek to deal with his property rights in the apartment in any way (for example by seeking to sell it, or to use it as collateral against a loan), and thus he could not be said to have suffered any damage to date as a result of his inability to be registered as owner. As for the second claim, the Chamber noted that it only has jurisdiction *ratione temporis* in respect of matters arising after 14 December 1995, and that the applicant did not submit details of any costs incurred by him as a result of the adjournment of the civil proceedings. As for the third claim, the Chamber considered that its Decision on the Merits constituted just satisfaction in this regard. As for the fourth claim, the Chamber accepted the claims of the applicant regarding the harassment he suffered at the hands of authorities of the Federation, who were attempting to evict him, and ordered the Federation to pay him KM 1,500 in respect of the suffering he underwent as a result of the attempted eviction.

### **Concurring Opinion**

Mr. Andrew Grotrian attached a concurring opinion in which he argued that the Chamber should have expressly reserved to the applicant the right to make a further compensation claim in future in the event that the Federation did not comply with the Chamber's order.

*Decision adopted 15 July 1998*

*Decision delivered (by notification in writing) 29 July 1998*

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| <b>Case No.:</b>           | CH/96/23  |
| <b>Applicant:</b>          | Fatima KALINČEVIĆ   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 11 March 1998 (decision on the merits)                          |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant and her husband possessed an occupancy right over an apartment in Sarajevo. The applicant's husband entered into a contract for the purchase of the apartment on 10 February 1992 in accordance with the terms of the Law on Securing Housing for the JNA. On 12 February 1992, he paid the purchase price due under the contract. In 1992 the applicant's husband and her children left Sarajevo for the United Kingdom. The applicant and her husband started proceedings to be registered as the owners of the apartment in January 1993. On 3 February 1995, the Presidency of the Republic of Bosnia and Herzegovina issued a decree adjourning all court proceedings relating to the purchase of apartments under the Law on Securing Housing for the JNA. The applicant's civil action was adjourned under this decree. On 22 December 1995, the Presidency of the Republic of Bosnia and Herzegovina issued a decree that contracts for sale of apartments concluded on the basis of the Law on Securing Housing for the JNA were invalid. On 30 April 1996, the applicant left Sarajevo to visit her husband and children in the United Kingdom. The applicant returned to Sarajevo on 12 July 1996 to find that the apartment had been declared abandoned and reallocated. The applicant moved back into the apartment where, at the time of the Chamber's consideration, she continued to reside under threat of eviction.

### Admissibility (*Separate decision adopted 6 June 1997*)

Noting that neither respondent Party raised any objection to the admissibility of the application and that no other "effective remedy" was available to the applicant, the Chamber declared the application admissible against both the State and the Federation.

### Merits

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

The Chamber found that the annulment of the purchase contract by the Decree of 22 December 1995, together with the resulting annulment of the applicant's claim to be registered as owner of the apartment, violated her rights under Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The applicant's court proceedings had been adjourned since shortly after the Decree of 3 February 1995 came into force, and had continued to be adjourned since the Dayton Peace Agreement came into force. Therefore, the Chamber found a continuing interference with the applicant's right of access to court for the purpose of having her civil claim determined as guaranteed by Article 6. The Chamber also found that the proceedings had been prolonged beyond a "reasonable time" due to their adjournment, also in violation of Article 6.

### Remedies

The breaches of Article 1 of Protocol No. 1 arose from the laws referred to above. The State is responsible for having passed those laws, but the matters that they deal with are now within the responsibility of the Federation, which recognizes and applies them. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take all necessary

steps by way of legislative or administrative action to render ineffective the annulment of the contract imposed by the Decree of 22 December 1995; to lift the compulsory adjournment of the court proceedings instituted by the applicant and her husband and to take all necessary steps to secure the applicant's right of access to court; and not to evict the applicant from the apartment.

*Decision adopted 17 February 1998*

*Decision delivered 11 March 1998*

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| <b>Case No.:</b>         | CH/96/27         |
| <b>Applicant:</b>        | Rifat BEJDIĆ     |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 14 January 1998  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Bosniak descent and the owner of a house in Banja Luka. The applicant occupies the ground floor of the house, and the applicant's son and his family once occupied the first floor. In August 1995 the applicant's son and his family were forcibly evicted from the first floor of the house by a Mr. B.S. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which issued a judgment ordering Mr. B.S. to transfer the first floor apartment into the possession of the applicant within fifteen days under threat of enforced performance. Mr. B.S. appealed the judgment to the Court of Appeal in Banja Luka, which refused the appeal. On 3 May 1996 the Court of First Instance issued a decision on execution requiring Mr. B.S. to return possession of the apartment at once to the applicant, but Mr. B.S. did not comply. Several attempts were made to execute the decision but without results, as the police did not take any action to assist court officials.

On 23 September 1996 the Commission for the Accommodation of Refugees and Administration of Abandoned Property issued a decision allocating the apartment to Mr. B.S. for temporary use under the Law on the Use of Abandoned Property ("old Abandoned Property Law"). On 3 October 1996 the applicant appealed the decision of the Commission to the Ministry of Refugees and Displaced Persons. At the time of the Chamber's consideration, there had been no response.

### **Admissibility**

The Chamber found that it was not established with sufficient certainty that any effective remedy was in practice available to the applicant, and declared the application admissible insofar as it related to alleged violations of the applicant's human rights since 14 December 1995.

### **Merits**

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

The Chamber considered two separate aspects of the case in relation to Article 1 of Protocol No. 1. First, the case concerned an alleged failure by the authorities to protect the applicant against a continuing interference with his property rights by Mr. B.S. Second, the case concerned the alleged interference with the applicant's property rights resulting from the administrative decision to allocate the apartment to Mr. B.S. The Chamber found that the failure of the authorities to enforce the court decision in the applicant's favour constituted a violation of the applicant's right to the peaceful enjoyment of his possessions pursuant to Article 1 of Protocol No. 1. The Chamber also found that the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property to allocate the apartment to Mr. B.S. violated Article 1 of Protocol No. 1, as no fair balance had been struck between the general interest of providing accommodation for refugees and the applicant's right to use his property for the accommodation of his family.

#### *Article 6 of the Convention*

Considering that the police had been passive despite the obligation on them to assist in the execution of the court decision, the Chamber found that the inertia of the competent authorities

involved a breach of the applicant's right to a determination of his civil rights within a "reasonable time," and thus that there was a violation of Article 6.

### **Remedies**

The Chamber ordered the Republika Srpska to revoke the decision allocating the apartment to Mr. B.S. and to take effective measures to restore the applicant's possession of the apartment.

*Decision adopted 2 December 1997*

*Decision delivered 14 January 1998*

### **DECISION ON CLAIM FOR COMPENSATION**

The applicant's claim for compensation consisted of four items: compensation for damage caused to the house and loss of movable property; pecuniary damage for loss of rent; non-pecuniary damage for maltreatment of the applicant and his family; and expenses and lawyer's fees. As to the first item, the Chamber found that the Republika Srpska could not be held responsible for the alleged damage and loss of moveable property. As to the second item, the Chamber found that there was a causal link between the non-execution of the judgment and the loss of rent and order the Republika Srpska to pay to the applicant KM 5,100 in respect of pecuniary injuries. As to the third item, the Chamber found that the alleged maltreatment of the applicant's family was not within the scope of the case. As to the fourth item, the Chamber order the Republika Srpska to pay to the applicant KM 250 in respect of expenses incurred in the proceedings before the Chamber.

Mr. Miodrag Pajić and Vitomir Popović attached a dissenting opinion in which they argued that the application should have been declared inadmissible for failure to exhaust domestic remedies, and that the Republika Srpska could not be held responsible for the applicant's loss.

*Decision adopted 14 July 1998*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/96/28         |
| <b>Applicant:</b>        | M.J.             |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 3 December 1997  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, was an occupancy right holder of an apartment located in Banja Luka. He and his family were forcibly evicted from this apartment in September 1995 by a Serbian refugee, Mr. K.V. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which ordered the eviction of Mr. K.V. Several attempts were made to execute its decision, but to no avail because the police did not take any action to assist court officials.

### **Admissibility**

The Chamber found that it was not established with sufficient certainty that any effective remedy was in practice available to the applicant and concluded that the application should therefore be accepted as admissible and examined on its merits insofar as it related to violations of the applicant's human rights which were alleged to have occurred since 14 December 1995.

### **Merits**

#### *Article 8 of the Convention*

Noting that the obligation effectively to secure respect for a person's home implies that there must be effective machinery for protecting it against unlawful interference of the kind which the applicant has suffered, the Chamber found that the police of the respondent Party gave no assistance to court officials in repeated attempts to enforce the order of the court for the eviction of the unlawful occupant and tolerated repeated obstruction of the officials in the execution of their duty. Furthermore no attempt was made to prosecute those responsible for obstructing the execution of the order of the court, although this would have been possible under domestic law. Thus there was a violation of Article 8.

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

The Chamber found, for the same reasons as given in the context of its examination of the case under Article 8, that the failure of the authorities to take the necessary measures to enforce the court order obtained by the applicant involved a failure effectively to secure his right to peaceful enjoyment of his possessions, and thus that there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber found that the police had been passive despite the obligation on them to assist in the execution of the court decision, and that the inertia of the competent authorities thus involved a breach of the applicant's right to a determination of his civil rights within a "reasonable time" under Article 6.

## **Remedies**

The Chamber ordered the Republika Srpska to take effective measures to restore to the applicant his possession of the apartment in question and reserved to the applicant the right to apply to it for any monetary relief or other redress he wished to claim.

*Decision adopted 7 November 1997*

*Decision delivered 3 December 1997*

## **DECISION ON CLAIM FOR COMPENSATION**

The applicant claimed compensation for: items which were in the apartment at the time of the forcible eviction of the applicant from his apartment; repairs to the apartment including painting and construction; suffering of the applicant and his family; and legal costs and fees. The Chamber found that the alleged loss of moveable property and property damage were not directly caused by the Republika Srpska or any person acting on its behalf but by the illegal occupant of the apartment. The Republika Srpska could not therefore be held responsible for it. The Chamber did not find that the applicant was subjected to any ill-treatment for which the authorities could be held responsible. Insofar as the applicant's claim related to his family, the Chamber found that their alleged suffering was outside the scope of the case. However, the Chamber found a causal link between the non-execution of the court decision and the applicant's emotional distress, and ordered the Republika Srpska to pay him KM 4,000 in compensation for non-pecuniary damage. The Chamber further ordered the Republika Srpska to pay the applicant KM 250 for his legal expenses.

*Decision adopted 14 October 1998*

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| <b>Case No.:</b>         | CH/96/29  |
| <b>Applicant:</b>        | The Islamic Community in Bosnia and Herzegovina |
| <b>Respondent Party:</b> | Republika Srpska                                |
| <b>Other Title:</b>      | “Islamic Community— Banja Luka”                 |
| <b>Date Delivered:</b>   | 11 June 1999                                    |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant represents the religious and ethnic minority of Bosnian Muslims in Banja Luka, a city currently with a majority population of Serb descent. Before the war, some 30,000 Muslims lived in the Banja Luka region and could perform their religious practice in 15 mosques in the city. The applicant claimed to be the owner of 15 mosques destroyed in the city in 1993, as well as of the land on which they stood. The applicant alleged that the respondent Party was responsible for the destruction of the mosques and maintained that the municipal bodies of Banja Luka had continued to destroy and remove remains of the mosques even after the Dayton Peace Agreement entered into force. On 3 March 1997 the applicant requested permission to reconstruct seven of the mosques and to erect fences around the sites, but did not receive any official reply.

The applicant complained that the killing, expulsion and displacement of Muslims in Banja Luka and the destruction of its 15 mosques (prior to the Dayton Peace Agreement), together with the removal of the remains of those mosques, the desecration of adjacent graveyards, the destruction of a building on the site of the Ferhadija mosque, the municipality's ongoing refusal to permit the construction of seven mosques or even the erection of fences around the remains of the sites, the inability of Muslims to worship on adequate premises, the local authorities' failure to protect believers during worship and funerals, and the refusal to allow the burial of the late Mufti on the Ferhadija mosque site (all events which occurred after the Dayton Peace Agreement), constituted discrimination against the applicant and its members on the grounds of religion and national origin in the enjoyment of their right to freedom of religion and the right to peaceful enjoyment of their possessions. This discrimination had allegedly continued since the destruction of the mosques in 1993.

### Admissibility

#### *Ratione personae*

The Chamber noted that the applicant is an independent religious community to which belong, among others, all Muslims in Bosnia and Herzegovina. The applicant could therefore claim status as a “victim” appearing on behalf of its members in Banja Luka in respect of the alleged violation of their freedom of religion, as guaranteed by Article 9 of the Convention. The Chamber understood the complaint regarding property rights to have been brought by the Islamic Community in its own right, as a legal person capable of possessing property under domestic law. Thus, the applicant could also claim status as a “victim” in relation to the alleged violation of its property rights under Article 1 of Protocol No. 1 to the Convention.

#### *Ratione temporis*

Insofar as the applicant had alleged that the authorities of the respondent Party were responsible for, or allowed, the destruction of its 15 mosques in Banja Luka in 1993 as well as the killing, expulsion and displacement of Muslims in the area prior to the entry into force of the Dayton Peace Agreement, the Chamber found that it was not competent to adjudicate the case. The remaining complaints related to a number of events which, taken as a whole, allegedly formed a pattern of

ongoing discrimination. The Chamber found itself competent to examine this situation insofar as it had continued after 14 December 1995.

*Lis alibi pendens*

The Chamber found that the actions taken by the Commission to Preserve National Monuments in regard to sites of destroyed mosques in Banja Luka did not preclude the Chamber from examining the applicant's grievances relative to rights and freedoms guaranteed by the Human Rights Agreement.

*Exhaustion of domestic remedies*

Recalling that the burden of proof was on the respondent Party to show that there was, in theory and in practice, an effective remedy available to the applicant, the Chamber found that it had not been established that such a remedy had been or was available to the applicant.

**Merits**

*Article 9 of the Convention*

The Chamber found that the failure of the authorities in Banja Luka to respond to the applicant's request for permission to rebuild seven of the destroyed mosques was an illegitimate interference with, or a limitation of, the right of Muslims in Banja Luka to freely manifest their religion as guaranteed by Article 9. The authorities' systematic failure to protect Muslims against assaults, provocation and other disturbances during worship and funerals violated the respondent Party's positive obligation to secure the right to freedom of religion for the applicant's members in Banja Luka. Thus the Chamber found a violation of Article 9.

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

The Chamber found that the objects that remained on the sites of the destroyed mosques on 14 December 1995, and the applicant's right under the Republika Srpska Law on Building Land to use the land on which the destroyed mosques had stood, were "possessions" protected by Article 1 of Protocol No. 1. The destruction and removal of objects on the sites after 14 December 1995 had deprived the applicant of its possessions. The continued refusal of the Municipality to allow the applicant to reconstruct any of the mosques amounted to a control of the use of its possessions. The respondent Party had failed to identify any general interest justifying the overall interference with the applicant's property rights. Thus the Chamber found a violation of Article 1 of Protocol No. 1.

*Discrimination*

The Chamber found that the case involved discrimination on grounds of religious and ethnic origin against the applicant and its membership in their enjoyment of the rights guaranteed by the above-mentioned Articles. The Chamber found that the Muslims in Banja Luka had been subjected to differential treatment compared with the local Serbian Orthodox majority. In the absence of any justification for such treatment, the Chamber concluded that the Banja Luka authorities had actively engaged in or passively tolerated discrimination against Muslim believers due to their religious and ethnic origin. This attitude of the authorities had hampered, and continued to hamper, the local Muslim believers' enjoyment of their right to freedom of religion for reasons which were clearly discriminatory. Accordingly, the respondent Party had failed to meet its obligation to respect and secure the right to freedom of religion without discrimination.

**Remedies**

The Chamber ordered the Republika Srpska to take immediate steps to allow the applicant to erect enclosures around the sites of the 15 destroyed mosques and to maintain those enclosures; to take all necessary action to refrain from the construction of buildings or objects of any nature on the sites

of the 15 destroyed mosques and on the cemeteries and other Islamic sites indicated in the application, and not to permit any such construction by any other institution or person, apart from the applicant and persons acting under its authority; to refrain from destroying or removing any object remaining on the sites of any of the 15 destroyed mosques and on the cemeteries and other Islamic sites indicated in the application, and not to permit any such destruction or removal by any other institution or person, apart from the applicant and persons acting under its authority; and to swiftly grant the applicant, as requested, the necessary permits for reconstruction of seven of the destroyed mosques at the location where they previously existed.

### **Dissenting/Concurring Opinions**

Mr. Rona Aybay, joined by Mr. Hasan Balić and Mr. Mehmed Deković, attached a concurring opinion in which he argued that the privileged treatment afforded the Serbian Orthodox Church by the Republika Srpska Constitution should be considered a permanent and inevitable source of discrimination.

Mr. Viktor Masenko-Mavi attached a partly concurring and partly dissenting opinion (in Memoriam Vlatko Markotić) in which he argued that when the Chamber addresses cases of discrimination in respect of rights provided by the Convention, the application of Article 14 in conjunction with the relevant Articles would be sufficient and would facilitate the clarity of the Chamber's judgments. As for the remedies, he stated that it would have been sufficient for the Chamber to order the respondent Party to process promptly the applicant's request for permission to reconstruct the mosques.

Mr. Vitomir Popović and Mr. Miodrag Pajić attached a dissenting opinion in which they argued that the application should have been declared inadmissible for the following reasons: incompatible *ratione personae*, incompatible *ratione temporis*, *lis alibi pendens*, and failure to exhaust local remedies.

*Decision adopted 11 May 1999*

*Decision delivered 11 June 1999*

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| <b>Case No.:</b>         | CH/96/30                                |
| <b>Applicant:</b>        | Sretko DAMJANOVIĆ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina    |
| <b>Date Delivered:</b>   | 8 October 1997 (decision on the merits) |

## **DECISIONS ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant was convicted by a District Army Court in 1993 of genocide and crimes against the civilian population. He was sentenced to death. On 30 July 1993 the High Court in Sarajevo altered the factual basis of the conviction but upheld the death sentence. The conviction, as upheld by the High Court, was for the murder of two brothers and also for the murder of a third person. It is alleged that the only evidence against the applicant consisted of false statements obtained from him and a co-accused by force. According to his representative, the applicant's defence lawyer discovered that the brothers are alive and well and, further, that two other persons have been accused of the murder of the third person in other proceedings. On the basis of these facts the defence lawyer applied to the High Court in Sarajevo for a review of the proceedings.

### **Admissibility (*Separate decision adopted 11 April 1997*)**

The Chamber found that insofar as the applicant complained that he was threatened with execution his complaints were within the Chamber's competence *ratione temporis*. The Chamber next found that the complaints concerning the possible carrying out of the death sentence on the applicant and the treatment he received raised serious issues under the Convention. The Chamber finally found that it had not been established that any effective domestic remedy was available to the applicant, and declared the application admissible.

### **Merits**

#### *Protocol No. 6 to the Convention*

Article 1 of Protocol No. 6 to the Convention abolishes the death penalty. However, Article 2 of the same Protocol qualifies this abolition by permitting states to "apply" the death penalty for acts committed in time of war, provided that the penalty be carried out "only in the instances laid down in the law and in accordance with its provisions." The Chamber decided that the relevant provisions of the Criminal Law of the Socialist Federal Republic of Yugoslavia lacked the necessary precision in defining the circumstances in which the death penalty applied and the acts to which it applied and could not therefore form a valid basis for the application of Article 2. Insofar as the applicant was threatened with execution on the basis of his conviction under these provisions, there was thus a violation of his rights under Article 1. The Chamber also considered that the provisions of the Criminal Law, insofar as they authorised the use of the death penalty in peacetime, were not consistent with the Constitution and that the threatened execution of the applicant was not therefore provided for by national law for the purposes of Article 2. Thus there was a breach of Article 2 of Protocol No. 6.

#### *Article 2 of the Convention*

Article 2 paragraph 1 of the Convention prohibits the death penalty "save in the execution of a sentence of a court...." A death sentence cannot be carried out under Article 2 paragraph 1 unless it was imposed by a "court" which was independent of the executive and the parties to the case and which offered procedural guarantees appropriate to the circumstances. With regard to the

circumstances of this case the Chamber concluded that the District Military Court lacked a sufficient appearance of independence and could not therefore be regarded as a “court” for the purposes of Article 2 paragraph 1. Thus there was a breach of Article 2 paragraph 1.

### **Remedies**

The Chamber ordered the Federation (a) not to carry out the death sentence on the applicant and (b) to secure that the death sentence against him was lifted without delay. The Chamber reserved to the applicant the right to apply to the Chamber for any other redress he wished to claim.

### **Concurring Opinions**

Mr. Manfred Nowak and Mr. Jakob Möller attached a concurring opinion in which they argued that even if all requirements of Article 2 of the Convention and Article 2 of Protocol No. 6 to the Convention were met, the carrying out of a death penalty after the entry into force of the Dayton Peace Agreement would nevertheless constitute a violation of the constitutional obligation to secure the absolute right not to be executed.

Mr. Viktor Masenko-Mavi and Mr. Rona Aybay attached a concurring opinion in which they argued that Protocol No. 6 establishes a subjective and justiciable right of individuals not to be condemned to death in peacetime, which implies that a contracting state must delete the death penalty from the system of its criminal law sanctions.

*Decision adopted 5 September 1997*

*Decision delivered 8 October 1997*

### **DECISION ON CLAIM FOR COMPENSATION**

The applicant submitted a claim for compensation on 10 December 1997. As for the respondent Party's claim that the applicant's claim for compensation was premature, as he had not yet claimed compensation under the Federation's Law on Criminal Proceedings, the Chamber held that the rule that domestic remedies should be exhausted did not apply to claims before the Chamber for monetary relief. The Chamber accepted that the applicant's fear that he would be executed constituted mental suffering for which monetary relief was in order, but pointed out that it could only award damages for suffering caused after 14 December 1995. In addition, the Chamber could not award any damages for the alleged irregularities in the original trial proceedings or the alleged maltreatment of the applicant, which were outside the scope of the case. The Chamber noted that the Federation had not yet enacted legislation abolishing the death penalty, so that the applicant's death penalty had therefore not been “lifted.”

The Chamber held that the damage suffered by the applicant did not lend itself to precise quantification. The Chamber ordered the Federation to pay the applicant DEM 15,000 for non-pecuniary suffering up to and including the date of its decision, and DEM 1,750 in respect of his legal costs and expenses. Further, the Chamber ordered the Federation to inform the Chamber, within one month, of the steps taken by it to conform with the Order in its Decision on the Merits of the present case, to secure that the death penalty against the applicant was lifted. The Chamber reserved to the applicant the right to submit further claims for compensation if sufficient steps were not taken by the Federation within one month to lift the death penalty against him.

*Decision adopted 11 March 1998*

*Decision delivered (by notification in writing) 16 March 1998*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review. The Chamber noted that the only possibility of a review of a Decision of the Chamber is where a Decision is made by a Panel and one of the parties or the Ombudsperson requests a review of it. Here, as the Decision on the claim for compensation was made by the plenary Chamber, the Chamber decided to reject the request for review.

*Decision adopted 15 July 1998*

*Decision delivered (by notification in writing) 22 July 1998*

### **DECISION ON ADDITIONAL CLAIM FOR COMPENSATION**

The applicant requested additional compensation for the respondent Party's non-compliance with the Chamber's decision delivered on 16 March 1998. As for the alleged unfairness of the proceedings by the Federation to commute the applicant's death sentence, the Chamber found it to be outside the scope of the case. As for the respondent Party's failure to confirm its payment of compensation awarded to the applicant, the Chamber found that this could not have been a reasonable basis for the applicant's fear of being executed. Thus the Chamber rejected the applicant's claims for compensation for additional emotional damage for fear that the death penalty would be carried out, and for the lawyer's preparation of the claim for additional compensation.

*Decision adopted 16 April 1999*

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| <b>Case No.:</b>           | CH/96/31  |
| <b>Applicant:</b>          | Cecilija TURČINOVIĆ   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 11 March 1998 (decision on the merits)                          |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant's son-in-law holds an occupancy right over an apartment in Sarajevo once under the jurisdiction of the JNA. In 1991 he concluded a contract to purchase the apartment from the JNA and paid the purchase price due. In 1992, the son-in-law and his wife left Sarajevo, leaving the apartment to the applicant. The apartment was declared abandoned on 19 September 1996 by a decision of the General Staff of the Army of the Federation based on the Law on Abandoned Apartments. The Decision was served on the applicant on 3 October 1996 and gave her 7 days to vacate the apartment. The applicant was evicted for one day on 10 April 1997 and allowed back into the apartment the following day. The applicant complained of her threatened eviction from the apartment and maintained that there had been violations of her right to her home, access to court and peaceful enjoyment of the apartment.

### Admissibility (*Separate decision adopted 9 May 1997*)

The Chamber found that the matters complained of fell within the jurisdiction of the Federation and that the application disclosed no appearance of any violation of human rights for which the State could be held responsible. Thus the Chamber declared the application inadmissible insofar as it was directed against the State, and admissible insofar as it was directed against the Federation.

### Merits

#### *Article 8 of the Convention*

The Chamber found that the apartment was the applicant's "home" for purposes of Article 8, as she had been living there since 1992. Noting that the decision of 19 September 1996, upon which the threatened eviction was based, referred to legislative provisions which did not exist and did not therefore disclose any legal basis for the decision, the Chamber found that the threatened eviction of the applicant was not "in accordance with the law," and thus that there was a violation of Article 8.

### Remedies

The Chamber ordered the Federation to revoke the decision of 19 September 1996 and not to evict the applicant from the apartment.

*Decision adopted 17 February 1998*

*Decision delivered 11 March 1998*

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| <b>Case No.:</b>         | CH/97/34          |
| <b>Applicant:</b>        | Jasmin ŠLJIVO     |
| <b>Respondent Party:</b> | Republika Srpska  |
| <b>Date Delivered:</b>   | 10 September 1998 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. On 23 March 1996 he and two friends were arrested by the Republika Srpska police. They had in their possession one landmine and some wire. On 14 October 1996 the Court of First Instance found the applicant guilty of “associating for the purpose of performing enemy activities” and terrorism, and sentenced him to seven years and six months’ imprisonment. At trial the applicant was represented by a Republika Srpska court-appointed lawyer, who subsequently filed an appeal of the decision of the lower court. On 5 August 1997, the District Court rejected the appeal. On 6 August 1997 the Ministry of Justice of the Republika Srpska issued a decision temporarily releasing the applicant from imprisonment for six months in order to receive medical treatment for epilepsy at a psychiatric hospital. At the end of that period, the applicant was required to return to the prison to complete his sentence. At the time of the Chamber’s consideration, the applicant was not in prison and stated that he had no intention to return to the Republika Srpska to serve the remainder of his prison term.

### **Admissibility**

The Chamber declared the application admissible insofar as it related to alleged violations of the applicant’s human rights under Articles 3, 5 and 6 of the Convention.

### **Merits**

#### *Article 3 of the Convention*

The Chamber found no violation of Article 3 with regard to the applicant’s treatment by the police. The applicant did not provide evidence that he was beaten or verbally abused, that he had reported the matter to any officials or that he had raised the matter at his trial or in any subsequent court proceedings. The applicant complained that he had not been provided any medical care during his detention at the Srpsko Sarajevo police station and that his subsequent transfer to the psychiatric hospital was inappropriate given his epileptic condition. The Chamber concluded that there was not sufficient evidence to find a violation of Article 3 with regard to the applicant’s medical treatment.

#### *Article 5 of the Convention*

The applicant alleged that his arrest was not in accordance with Article 5 paragraph 1 because there was no “reasonable suspicion” that he had committed an offence. Under the circumstances of the case, the Chamber found no violation of Article 5 paragraph 1. However, the Chamber found that the applicant’s detention for nearly two days after the expiration of the time-limit for detainees to be brought before an investigative judge constituted a violation of Article 5 paragraph 3. The Chamber also found that the court’s decision to open an investigation against the applicant for war crimes was inconsistent with Article 5 paragraph 1 because the respondent Party had failed to obtain the prior approval of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) as required by the Rules of the Road.

*Article 6 of the Convention*

The applicant alleged that he was unable to obtain legal assistance of his own choosing because Federation lawyers were not permitted to appear before Republika Srpska courts. However, the Chamber did not find any evidence that the applicant indicated his wish to engage his own lawyer and therefore found no violation of Article 6 paragraph 3(c). The applicant also alleged that his court-appointed lawyer failed to defend him adequately. The Chamber found that the court-appointed lawyer did not meet or otherwise communicate with the applicant in preparation for the trial or for any other stage of proceedings. Accordingly, the Chamber found that there was a violation of Article 6 paragraph 3(b) taken together with Article 6 paragraph 1. Finally, the applicant alleged that the trial was not held in public, that his family was not informed about the trial, and that representatives of the international community did not attend the trial. However, the official Minutes of the trial explicitly indicated the public nature of the trial, and the applicant did not provide any evidence that his family or the international community had been excluded. The Chamber thus found no violation of Article 6 paragraph 1 in this regard.

**Remedies**

The Chamber decided that its Decision was sufficient remedy for the moral damage suffered by the applicant.

**Dissenting Opinion**

Mr. Mehmed Deković attached a dissenting opinion in which he argued that there had been a violation of Article 3 due to inadequate medical treatment of the applicant; of Article 5 because the applicant's behavior did not correspond to the crime for which he was tried and found guilty; and of Article 6 because the trial had not been conducted publicly and the applicant had been denied legal assistance from the Federation.

*Decision adopted 16 July 1998*

*Decision delivered 10 September 1998*

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| <b>Case No.:</b>         | CH/97/35                             |
| <b>Applicant:</b>        | Mirjana MALIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Published:</b>   | 25 May 1998                          |

## **REPORT ON AMICABLE RESOLUTION**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serbian descent. She worked as an associate professor at the Faculty of Dental Medicine of the University of Sarajevo until 2 May 1992 when she stopped working due to the war. In a decision dated 11 July 1992 the Faculty of Dental Medicine terminated her employment effective 23 May 1992 for the reason of her absence without leave for more than 20 working days. On 20 July 1992 she appealed to the Dean of the Faculty of Dental Medicine but did not receive any response.

On 23 February 1996 the applicant brought a complaint before the Ombudsman of the Federation that she had been discriminated against in her right to work and economic independence by the Faculty of Dental Medicine's termination of her employment and its failure to respond to her request for re-employment, although others, who were of Bosniak descent, were reinstated. The Federation Ombudsman investigated the complaint and concluded that the case raised serious issues of discrimination based on national origin because the Faculty of Dental Medicine had, since the end of the war, re-employed four professors of Bosniak descent but had not re-employed the applicant.

### **Resolution Reached**

The Chamber adopted a report on the amicable resolution in accordance with Article IX of the Human Rights Agreement and Rule 44 of its Rules of Procedure. As part of the resolution, the Faculty of Dental Medicine agreed to issue a procedural decision by which the termination of the applicant would be annulled; to issue a decision by which the applicant would be offered employment and working duties as an Associate Professor at the Department of Dental Diseases effective 23 May 1992; to regulate all obligations concerning the payment of contributions to the Pension Fund on behalf of the applicant and all other obligations provided by law in respect to the realisation of her right to a pension, and to regulate all other obligations concerning the recording of her years of continuous service into her workbook and other official documents of the Faculty of Dental Medicine, without any interruption since the beginning of her employment; and to enable the applicant to perform her duties under the same conditions provided for all employees with identical qualifications and experiences, without any obstructions. The applicant agreed to accept all decisions of the University immediately after their delivery, with no right of petition, so that their validity and enforcement could be established, and that after delivery no issues would be raised on her behalf, nor would she claim any other pecuniary redress. Finding that the resolution was based on the respect for the rights and freedoms referred to in the Human Rights Agreement, the Chamber approved the terms of the amicable resolution.

*Report adopted 14 May 1998*

*Report published 25 May 1998*

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| <b>Case No.:</b>         | CH/97/40                              |
| <b>Applicant:</b>        | Saša GALIĆ                            |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina  |
| <b>Date Delivered:</b>   | 12 June 1998 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant possesses the occupancy right over an apartment in Sarajevo. He entered into a contract for the purchase of the apartment on 10 February 1992 in accordance with the Law on Securing Housing for the JNA. On 14 February 1992, he paid the purchase price due under the contract. The applicant was studying in France when the hostilities commenced in Bosnia and Herzegovina, and his family remained in the apartment with his permission. The apartment was subsequently let to the Lika family.

The apartment was declared temporarily abandoned on 22 April 1995 and permanently abandoned on 24 May 1996 by decisions of the Army Housing Fund based on the Law on Abandoned Apartments. These decisions were not communicated to the applicant. On 7 May 1997, the applicant applied to the Court of First Instance in Sarajevo, and on 17 June 1997, the Court awarded possession of the apartment to the applicant. On 3 October 1997, the Lika family moved out of the apartment and the applicant regained possession. The applicant's father communicated the Court's decision and the fact that the applicant had regained possession to the Army Housing Department on 4 October 1997. Later that day, however, the applicant was forcibly evicted from the apartment.

### Admissibility (*Separate decision adopted 21 February 1998*)

Noting that it was not established that any effective remedy was available to the applicant, the Chamber declared the application admissible.

### Merits

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

Referring to *Medan* the Chamber concluded that the decision of 24 May 1996 declaring the applicant's apartment to be permanently abandoned and the eviction of the applicant from the apartment on 4 October 1997 violated his rights under Article 1 of Protocol No. 1.

#### *Article 8 of the Convention*

The Chamber found that the eviction of the applicant was an interference with his right to respect for his home. The applicant was not given a copy of any decision authorizing the eviction, and it was impossible for him to ascertain the legal basis, if any, for the decision. Thus, the Chamber concluded that the eviction was not in accordance with the law and constituted a violation of Article 8.

#### *Article 13 of the Convention*

The respondent Party did not suggest that there was any mechanism in domestic law by which the applicant could seek redress for the violations of his rights found by the Chamber. Accordingly, the Chamber found a violation of the right to an effective remedy before a national authority as guaranteed by Article 13.

## **Remedies**

The Chamber ordered the Federation to take all necessary steps to allow the applicant to be registered as the owner of his apartment. The Chamber also ordered the Federation to take all necessary steps to render ineffective the decision declaring the apartment permanently abandoned and to allow the applicant to regain possession of his apartment. In addition, the Chamber ordered the Federation to pay the applicant DEM 4,132 for his inability to enjoy the use of his apartment, and DEM 16.50 for each day from the date of delivery of the Chamber's Decision until the applicant regained possession of his apartment.

*Decision adopted 8 June 1998*

*Decision delivered 12 June 1998*

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| <b>Case No.:</b>         | CH/97/41                             |
| <b>Applicant:</b>        | Milorad MARČETA                      |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 April 1998                         |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

Milorad Marčeta is a citizen of Bosnia and Herzegovina of Serb descent and a resident of the Federal Republic of Yugoslavia. On 22 October 1996 Mr. Marčeta returned to Sanski Most to visit his former home. His presence was reported to the authorities and he was subsequently arrested. On the day of his arrest, the Chief of Police ordered that Mr. Marčeta be detained for a maximum of three days on suspicion of an unspecified criminal act. On 25 October 1996 Mr. Marčeta was charged with war crimes and his pre-trial detention was ordered for a period of one month. Mr. Marčeta's lawyer provided to the court documentation of his 50 per cent disability since January 1986 and a certificate from the Ministry of Defence confirming that Mr. Marčeta had not been a member of the armed forces since his compulsory military service during the 1960s. On 21 November 1996, Mr. Marčeta was indicted on war crimes charges. On 27 November 1996, his lawyer appealed, alleging that there was no *prima facie* evidence of Mr. Marčeta's guilt and that ICTY had not been given prior approval for the prosecution as required by the Rules of the Road. On 8 August 1997, ICTY informed the Bosnian embassy in The Hague that there was insufficient evidence for prosecution. The court and the prosecutor's office were informed of the ICTY decision on 12 August 1997, and Mr. Marčeta was released that day.

### Admissibility

Regarding the applicant's complaints relating to his detention and restrictions of his freedom of movement, the Chamber declared the application admissible for consideration under Article 5 paragraph 1 of the Convention. Regarding his claims of discrimination, the Chamber declared the application admissible for consideration under Article 5 of the Convention and Articles 9, 12 and 26 of the International Covenant on Civil and Political Rights ("ICCPR").

### Merits

#### *Article 5 of the Convention*

Noting that the Rules of the Road applies as domestic law in the Federation, and that Mr. Marčeta had been detained without ICTY's prior approval, the Chamber found that Mr. Marčeta could not at any relevant time have been legally arrested or detained on war crimes charges. The Chamber thus found that Mr. Marčeta's arrest and detention were in contravention of the Rules of the Road. Accordingly, the Chamber held that Mr. Marčeta's arrest and detention constituted a violation of his right to liberty and security of person as guaranteed by Article 5 paragraph 1.

#### *Discrimination*

The Chamber found that Mr. Marčeta was a victim of discrimination. Mr. Marčeta was stopped by inhabitants of Sanski Most and arrested by the police because of his Serb origin. With the connivance of the police, Mr. Marčeta was beaten and threatened by civilians who used abusive expressions in reference to Mr. Marčeta's Serb descent and who linked him to atrocities allegedly committed by Bosnian Serbs. The Chamber thus found that Mr. Marčeta had been discriminated against on the ground of his national origin in the enjoyment of his rights to personal liberty, freedom of movement and equal protection of the law as provided for, respectively, in Article 5 of the Convention and in Articles 9, 12 and 26 of the ICCPR.

## **Remedies**

The Chamber ordered the Federation to pay Mr. Marčeta DEM 30,000 in compensation for pecuniary and non-pecuniary damages.

## **Dissenting Opinion**

Mr. Masenko-Mavi attached a partly dissenting opinion disputing the majority's reasoning in its treatment of the discrimination issue. First, Mr. Masenko-Mavi stated that discrimination was not the main point of this case. Second, he argued that it would have been sufficient to consider the discrimination issue under Article 14 of the Convention and that consideration of the ICCPR was superfluous.

*Decision adopted 3 April 1998*

*Decision delivered 6 April 1998*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the amount awarded by the Chamber was excessive, and that the applicant had not exhausted all domestic remedies prior to initiating proceedings at the Chamber. Noting that the Human Rights Agreement and the Chamber's Rules of Procedure do not provide for the review of decisions made by the plenary Chamber (such as the Decision on Admissibility and Merits in this case), the Chamber rejected the respondent Party's request.

*Decision adopted (by notification in writing) 15 July 1998*

*Decision delivered 22 July 1998*

## **DECISION ON CLAIM FOR COMPENSATION**

The applicant claimed compensation for legal costs and expenses totaling DEM 13,711. The Chamber found that the applicant's lawyer had failed to identify specific activities and the amount to be paid for each activity, and ordered the Federation to pay to the applicant KM 1,710 by way of compensation for legal costs and expenses.

*Decision adopted 15 December 1998*

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| <b>Case No.:</b>         | CH/97/42                             |
| <b>Applicant:</b>        | Dušan ERAKOVIĆ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 15 January 1999                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant holds an occupancy right over an apartment in Sarajevo. In March 1995 he left the city to seek medical treatment. Shortly thereafter his apartment was declared abandoned under the Law on Abandoned Apartments ("old Abandoned Apartments Law") and temporarily allocated to a temporary occupant. On 21 June 1996 he returned to Sarajevo but was not successful in trying to re-enter his apartment. In November 1996 the apartment was declared permanently abandoned and allocated to the temporary occupant. In July 1998 the applicant received a decision under the Law on the Cessation of the Application of the Law on Abandoned Apartments ("new Abandoned Apartments Law"), confirming his occupancy right and entitling him to reclaim the apartment. However, the decision also established that the temporary occupant had obtained a new occupancy right based on a contract signed on 7 January 1998 and had moved into the apartment before 7 February 1998. Pursuant to the new Abandoned Apartments Law the allocation right holder was therefore ordered to refer the case to the competent cantonal authority within 30 days for a further decision by which either the temporary occupant or the applicant was to be allocated another apartment. At the time of the Chamber's consideration, no such decision had yet been made.

### Admissibility

Noting that the applicant's apartment was declared abandoned prior to 14 December 1995 but observing that the applicant's grievance related to a situation which continued beyond that date, the Chamber decided that it was competent *ratione temporis* to examine the case. Considering that the applicant could not be required to exhaust any further remedy provided by domestic law, the Chamber declare the application admissible.

### Merits

#### *Article 8 of the Convention*

As in *Kevešević*, the Chamber found that the provisions of the old Abandoned Apartments Law failed to meet the standards of a "law" for the purposes of Article 8. Accordingly, the Chamber found that Article 8 was violated by virtue of the decision to declare the applicant's apartment abandoned. The Chamber further noted that the applicant's claim for repossession had not yet been finally examined in compliance with the time limits in the new Abandoned Apartments Law. Thus there had been a violation of the applicant's right to respect for his home under Article 8 insofar as the procedure for examining his repossession claim had not been "in accordance with the law."

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

As in *Kevešević*, the Chamber found that a decision to declare abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Abandoned Apartments Law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law." Accordingly, Article 1 of Protocol No. 1 was violated by virtue of the decision to declare the applicant's apartment permanently abandoned. Given that his claim for repossession had not been finally examined in compliance with the time limits in the new Abandoned Apartments Law, this procedure had not been "subject to the conditions provided for by law" either. Thus there had been a continuing violation of the applicant's right under Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to process the applicant's repossession claim without further delay, with a view to its being granted and the decision swiftly enforced.

### **Concurring Opinion**

Mr. Vlatko Markotić, Mr. Vitomir Popović and Mr. Želimir Juka attached a concurring opinion in which they stressed that an occupancy right may not be terminated because a person leaves to receive medical treatment, and that the wartime and post-war legislation should not have been applied to the applicant's right to reinstatement, since he never lost the right to the apartment in a lawful way.

*Decision adopted 14 January 1999*

*Decision delivered 15 January 1999*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/45                             |
| <b>Applicant:</b>        | Samy HERMAS                          |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 18 February 1998                     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

Samy Hermas is a citizen of Bosnia and Herzegovina of Bosniak descent. He also has Jordanian citizenship. On 10 February 1996 Mr. Hermas and several others were arrested by Bosnian Croat civilian police. They were taken to barracks in Kiseljak occupied by Bosnian Croat armed forces where they were detained for 22 days in an unheated cell. On 2 March 1996 Mr. Hermas was transferred to a military prison, and during the transfer he was severely beaten. In May 1996, Mr. Hermas was informed by the commander of the prison that he was being held in anticipation of an exchange for prisoners of Croat descent held by the Government of Bosnia and Herzegovina. Mr. Hermas remained at the military prison until 27 June 1996. During this time he was required to do work such as cleaning the barracks and moving equipment. On 27 June 1996, he was brought before an investigative judge who formally ordered his detention, apparently on war crimes charges. On 25 July 1996 Mr. Hermas was confronted with a woman whom he was alleged to have tortured, but she did not recognize him. The Travnik Higher Court ordered his release. This order was appealed and Mr. Hermas was ordered to be detained for another month. On 7 August 1996, Mr. Hermas was released near Mostar as part of a prisoner exchange.

### **Admissibility**

The Chamber construed the respondent Party's argument, that it would have been open to the applicant to apply to the competent Minister of Justice and court for compensation for damage arising from his detention, as a statement that the law of the Federation provides for an "enforceable right to compensation" for detention suffered in violation of Article 5. Had the Chamber accepted this argument, the implication would have been that there was no violation of Article 5. The Chamber joined this objection to the merits and declared the application admissible.

### **Merits**

#### *Article 3 of the Convention*

The Chamber concluded that the physical violence the applicant suffered while in detention constituted inhuman or degrading treatment and a violation of Article 3. The Chamber concluded that his being kept in a state of prolonged uncertainty as to his eventual fate, which was further aggravated by threats of death and severe injury, similarly constituted a violation of Article 3.

#### *Article 4 of the Convention*

The Chamber concluded that in light of the applicant's unlawful detention in violation of Article 5 of the Convention, his forced work while in detention was a violation of Article 4.

#### *Article 5 of the Convention*

The Chamber concluded that the applicant's detention for the sole purpose of exchanging him for other prisoners was a violation of Article 5 paragraph 1. The Chamber found a violation of Article 5 paragraph 2 due to the fact that Mr. Hermas was not informed of the grounds for his arrest for four and one-half months. The Chamber found a violation of Article 5 paragraph 4 because no remedy

was available to the applicant until he was brought before the investigative judge. The Chamber found a violation of Article 5 paragraph 5 because the right to compensation under Federation law was not an effective remedy.

*Article 13 of the Convention*

The Chamber found that no separate issue arose under Article 13 in relation to the violations of Articles 4 and 5 of the Convention. However, the Chamber concluded that there was no adequate remedy provided in relation to the violation of Article 3 of the Convention. Thus there was a violation of Article 13 of the Convention.

*Discrimination*

The Chamber found that the applicant's detention solely for the purpose of a prisoner exchange constituted discrimination based on his religion and national origin. The Chamber found violations of Article 14 in conjunction with the violations of Articles 3, 4, and 5 of the Convention.

**Remedies**

The applicant requested a written apology from the Federation. The Chamber decided that its Decision constituted a sufficient remedy in this regard. The applicant also asked the Chamber to order the Federation authorities to issue a written certificate that he was not under investigation or suspicion regarding his role in the war. The Chamber found this request to be outside the scope of the case. The Chamber ordered the Federation to pay the applicant DEM 10,000 as compensation for moral damage, DEM 6,500 for loss of income, and DEM 1,500 for loss of a year of study.

*Decision adopted 16 January 1998*

*Decision delivered 18 February 1998*

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|--------------------------|--|
| <b>Case No.:</b>         | CH/97/46                                   |
| <b>Applicant:</b>        | Ivica KEVEŠEVIĆ                            |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina       |
| <b>Date Delivered:</b>   | 10 September 1998 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a citizen of Bosnia and Herzegovina of Croat descent. In 1993 he left his apartment in Vareš, to which he had an occupancy right, after the town passed into the control of the Army of the Republic of Bosnia and Herzegovina. In July 1995 the applicant's son and in April 1996 the applicant and his spouse returned to the apartment. On 22 November 1996 the applicant's apartment was declared permanently abandoned under Article 10 of the old Abandoned Apartments Law. On 26 November 1996 the applicant appealed this decision to the Ministry of Urban Planning and Environment, which rejected the appeal on 28 November 1996. On 28 November 1996 the applicant and his family were evicted. On 11 March 1998 the Chamber held a hearing at which the agent of the respondent Party stressed a willingness to reach a friendly settlement. However, after the hearing, the Chamber was informed on several occasions by the applicant that he had not been re-instated into his apartment.

### Admissibility (*Separate decision adopted 16 January 1998*)

Noting that the respondent Party had not stated any objection to the admissibility of the application, and that it had not suggested that any other effective alternative remedy existed which the applicant should exhaust, the Chamber declared the application admissible.

### Merits

#### *Article 8 of the Convention*

The Chamber established that the applicant's links to his pre-war apartment were sufficient for that apartment to be considered his "home" for the purposes of Article 8 paragraph 1 of the Convention. After finding that the Decision of 22 November 1996 and the subsequent eviction interfered with the applicant's right to respect for his "home" in the sense of Article 8, the Chamber considered whether the interference was "in accordance with the law" as required by Article 8. The Chamber recalled that in order for a provision to meet the standards of a "law" as this expression is to be understood for the purposes of Article 8, it must be adequately accessible, and it must be formulated with sufficient precision to allow the citizen to regulate his conduct.

As to the first requirement, the Chamber noted that the old Abandoned Apartments Law provided for a time-limit of seven days or fifteen days, running from the date of publication of the Decision on the Cessation of War within which interested persons could claim the right to return to housing to which they had held an occupancy right. This decision was taken by the Presidency of the Republic of Bosnia and Herzegovina on 22 December 1995 and posted the same day on the bulletin board of the Presidency building in Sarajevo with the effect that the Decision came into force on the same day. Considering the large number of persons with a potential interest in the legal provisions in question as well as to the fact that these persons were to be found throughout the country and even abroad, the Chamber found it wholly unrealistic to expect the contents of a notice posted on a single bulletin board in the capital to come to the notice of such a public. Thus the old Abandoned Apartments Law was not "accessible."

As to the second requirement, the Chamber found that compliance with the time limits in the old Abandoned Apartments Law was practically impossible. It is not acceptable that a law should deprive

persons permanently of their rights if they do not fulfil a wholly unreasonable condition, such as the time-limit referred to, which could not possibly be fulfilled by the vast majority of those affected. Thus the Chamber found that the old Abandoned Apartments Law did not meet the standards of a “law” as this expression is to be understood for the purposes of Article 8, and that there was a violation of the applicant’s right to respect for his home under Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that interference with the applicant’s right to peaceful enjoyment of his possessions was contrary to the law, and thus that there was a violation of Article 1 of Protocol No. 1.

*Discrimination*

The Chamber found that the applicant did not provide sufficient evidence that his national or ethnic origin had motivated the authorities to declare his apartment abandoned and to evict him and his family, and thus could not find that he had been discriminated against.

**Remedies**

The Chamber ordered the Federation to take all necessary steps to annul the decision of 22 November 1996 declaring the apartment abandoned and to re-instate the applicant into his apartment.

**Dissenting Opinions**

Mr. Manfred Nowak attached a dissenting opinion in which he argued that the Chamber should have addressed the issue of discrimination under Article II paragraph 2(b) of the Human Rights Agreement and found discrimination in relation to the right to possession and respect for the home.

Mr. Jakob Möller attached a dissenting opinion in which he argued that the applicant’s allegation that the sole reason for his eviction was his Croat origin was sufficient to sustain a finding of a violation of Article 14 in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

*Decision adopted 15 July 1998*

*Decision delivered 10 September 1998*

**DECISION ON CLAIM FOR COMPENSATION**

The applicant claimed compensation totaling KM 6,500 for the following items: (1) devastation of the apartment; (2) movable possessions in the apartment; (3) the applicant’s mental suffering and medical treatment; (4) rent the applicant had to pay for residing elsewhere; (5) costs for legal advice and other expenses; (6) costs to reconnect his telephone line. The Chamber found that the applicant failed to substantiate his claims for items (1) and (2). As for item (3), the Chamber ordered the Federation to pay the applicant KM 1,500 in non-pecuniary damages. As for item (4), the Chamber ordered the Federation to pay the applicant KM 2,500 in pecuniary damages. As for item (5), the Chamber found that it was inappropriate to award legal costs as the applicant was not represented by a practicing lawyer, but ordered the Federation to pay the applicant KM 250 by way of compensation for other expenses. The Chamber found that the applicant failed to substantiate his claim under item (6).

**Dissenting Opinion**

Mr. Manfred Nowak attached a partly dissenting opinion stating that the Chamber should have assessed the seriousness of the respective human rights violations and the amount of suffering

caused by such violations and, on the basis of such assessment, decided the appropriate remedy and granted a fair amount of compensation in the form of a lump sum. Rather than wasting time with a long “fact-finding exercise” on how much damage had actually been caused and whether KM 650 as costs for legal advice were justified, the Chamber should have granted the applicant a lump sum of at least KM 6,500 as compensation for his pecuniary damages and mental suffering.

*Decision adopted 15 May 1999*

*Decision delivered (by notification in writing) 24 August 1999*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/97/48 et al.   |
| <b>Applicants:</b>         | Milovan POROPAT et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “4 Frozen Bank Account Cases”                                   |
| <b>Date Delivered:</b>     | 9 June 2000   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are citizens of Bosnia and Herzegovina. Before the dissolution of the Socialist Federal Republic of Yugoslavia they deposited foreign currency with commercial banks in that country. Because of a growing shortage of such currency and other economic problems, the withdrawal of money from these “old” foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s. Before, during and after the war in Bosnia and Herzegovina the applicants were largely unable to withdraw money from their accounts. They initiated court proceedings in this matter but at the time of the Chamber’s consideration their action had been unsuccessful and the proceedings were still pending.

According to legislation enacted by the Federation in 1997 and 1998, in particular the Law on Determination and Settlement of Citizen’s Claims in the Privatisation Process, claims based on the old foreign currency savings accounts are to be resolved in the process of privatisation of socially owned property. Like the claims of pensioners, soldiers and workers in formerly socially owned companies, the balances of the savings are to be recorded in a “Unique Citizen’s Account” maintained by the Federal Payment Bureau. Instead of payment of outstanding pensions, salaries or savings, the Bureau issues “certificates” in the commensurate amounts. According to the relevant legal provisions, these certificates can be used in the privatisation process to purchase apartments, municipal business premises and shares and assets of enterprises.

None of the applicants had so far participated in the privatisation process. Instead, they wished to have cash disbursed from their bank accounts. Allegedly, using the certificates in the privatisation process was not an option for them as they already owned private houses and could not make use of the assets made available in the privatisation process or did not have the supplementary cash necessary for purchasing such assets. The applicants claimed that they may have been forced to sell their certificates on the secondary market where, according to advertisements in daily newspapers in February 2000, such certificates were being offered for sale at about 5 per cent of their nominal value. The applicants complained that their rights to peaceful enjoyment of their possessions and to a fair hearing within a reasonable time before an independent and impartial tribunal had been violated.

### Admissibility

Noting that the applicants’ claims against the banks in question remained valid at the entry into force of the Dayton Peace Agreement, the Chamber found that it was competent *ratione temporis* to examine the case. The Chamber also found that it was competent *ratione personae* to consider the applications in regard to both the State and the Federation. The Chamber further found that there were no effective domestic remedies available to the applicants which they should be required to exhaust, and declared the application admissible.

## Merits

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

The Chamber found that the State and the Federation violated the applicants' rights under Article 1 of Protocol No. 1 to the Convention. It considered, in this respect, that the State had failed to take adequate action in regard to the old foreign currency savings to secure the applicants' rights and that the Federation took measure in regard to these savings which placed an "individual and excessive" burden on the applicants. In view of these findings, the Chamber decided that it was not necessary to examine the applicants' complaints under Article 6 of the Convention.

## Remedies

The Chamber ordered the Federation to amend the privatisation programme so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency accounts. It did not order any remedy in regard to the State's violation of the applicant's property rights. Both respondent Parties were, however, ordered to compensate the applicants for their legal expenses.

## Dissenting Opinions

Ms. Michèle Picard attached a partly dissenting opinion in which she argued that the Chamber had exceeded its competence in deciding what would have been the right solution for the State to have taken in response to the foreign currency savings issue, as long as the measure taken was not manifestly lacking any reasonable basis. Thus she voted against finding a violation by the State.

Mr. Giovanni Grasso and Mr. Viktor Masenko-Mavi attached a partly dissenting opinion in which they argued that there had been a violation of Article 6 of the Convention in three of the cases, for which the Federation was responsible.

Mr. Dietrich Rauschning attached a partly dissenting opinion in which he argued that the lack of action by the State was neither a deprivation nor a control of use of the assets deposited with the banks, and thus that the Chamber should not have found a violation by the State.

Mr. Jakob Möller, joined by Mr. Hasan Balić, Mr. Želimir Juka, Mr. Viktor Masenko-Mavi and Mr. Mato Tadić, attached a partly dissenting opinion on the remedies in which he argued that the Chamber should have ordered the State to recognise its shared responsibility for bringing about a just and equitable solution to the foreign currency savings issue.

Mr. Miodrag Pajić and Mr. Vitomir Popović attached a partly dissenting opinion in which they argued that the applications should have been declared inadmissible as incompatible *ratione temporis* and *ratione materiae*, and that the remedy ordered by the Chamber was not effective.

Mr. Grotrian attached a partly dissenting opinion in which he argued that the Chamber should not have found a violation of Article 1 of Protocol No. 1 to the Convention by the State but should have found a violation of Article 6 of the Convention by the Federation in three of the cases.

*Decision adopted 10 May 2000*

*Decision delivered 9 June 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/49                             |
| <b>Applicant:</b>        | Vladan ĐURIĆ                         |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 13 January 2000                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina, was an occupancy right holder of an apartment located in Sarajevo. In late 1992 the applicant, with the permission of the competent authorities, went abroad to receive medical treatment. In 1994 the holder of the allocation right over the apartment, Energoinvest Birotehnika, reallocated it to a temporary user, an employee of Energoinvest Birotehnika. In 1996 the applicant returned to Bosnia and Herzegovina, expecting to live in the apartment, but the temporary occupant was still there. Energoinvest Birotehnika requested that the Municipal Secretariat for Housing Affairs declare the apartment abandoned and terminate the applicant's occupancy right. Energoinvest Birotehnika's request was accepted and the applicant's occupancy right was suspended and the apartment was declared permanently abandoned under the old Abandoned Apartments Law. After a period where the applicant lived with the temporary occupant and his family, the applicant was denied entrance to the apartment. In 1998 the applicant lodged a request for reinstatement to the Municipal Secretariat for Housing Affairs under the new Abandoned Apartments Law.

### **Admissibility**

The Chamber finds that while pending domestic remedies were possibly effective in theory, they proved to be wholly ineffective in practice. Thus the Chamber found that the applicant could not be required to exhaust domestic remedies and declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

As in *Kevešević* and *Onić*, the Chamber found that the provisions of the old Abandoned Apartments Law, including those relevant to this case, failed to meet the standards of a "law" under Article 8. As a result, the declaration that the applicant's apartment was abandoned was not done "in accordance with the law" as required by Article 8 paragraph 2 and thus there was a violation of Article 8.

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

As in *Kevešević* and *Onić*, the Chamber found that the applicant's occupancy right over the apartment in question constituted a "possession" within the meaning of Article 1 of Protocol No. 1 and that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Abandoned Apartments Law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

Noting that the conduct of the authorities was the main cause of the delays in the proceedings in the applicant's case, and that a speedy outcome of the dispute would have been of particular importance to the applicant, given that the question concerned his home and property, the Chamber

found a violation of Article 6 paragraph 1 in that the proceedings had not been determined within a reasonable time.

**Remedies**

The Chamber ordered the Federation to take all necessary steps to enable the applicant to return swiftly to his apartment.

*Decision adopted 9 December 1999*

*Decision delivered 13 January 2000*

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| <b>Case No.:</b>         | CH/97/50                             |
| <b>Applicant:</b>        | Edita RAJIĆ                          |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 7 April 2000                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is of Croat origin and a teacher of arts from Semizovac near Vogošća. During the war, when the territory where she was teaching was controlled by Serb forces, she remained there and continued to work as a teacher. After the end of the war and the integration of Vogošća into the Federation, the applicant wished to continue to work in the school. However, she was not invited to come to work, but was told to participate in a competition for posts. She participated in the competition without success. The applicant sought legal redress to regain her post, but her civil action was rejected in the first instance on the ground that the applicant, by staying on territory controlled by Serb forces, "had put herself on the side of the aggressor." While her appeal to the Cantonal Court in Sarajevo was pending, the applicant found new employment in another school in Sarajevo. The applicant complained that she had been discriminated against in her right to work as guaranteed by Article 6 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), in conjunction with Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), as mainly teachers of Bosniak origin were re-employed.

### **Admissibility**

The Sarajevo Municipal Court II rendered its judgment on 18 November 1997. The applicant appealed. The Municipal Court encountered problems when transmitting its judgment to the applicant's representative and had no record of the date of delivery, and therefore requested the applicant's representative to indicate when she received the judgment. As the representative failed to provide this information, the court refused to transmit the appeal and the case-file to the higher court. The Chamber noted that the applicant should not have to bear the burden of proof of whether an appeal has been submitted in time. Hence, if a court cannot determine when a judgment has been delivered, there appears to be no ground on which to conclude that the appeal has not been submitted in time and refuse to transmit it to the higher instance court, as was done in the present case. In any event, the Municipal Court would have had the possibility to reject the appeal by a procedural decision against which the applicant could have appealed. This was not done in the present case. Thus, the failure of the Municipal Court to process the applicant's appeal was based on a wrong application of domestic law. The Chamber therefore concluded that the applicant had no effective remedy at her disposal and, notwithstanding the fact that the domestic judicial proceedings were still pending, declared the application admissible.

### **Merits**

#### *Discrimination*

The Chamber found that the school's retroactive termination of the applicant's working relationship violated her right not to be discriminated against in the right to work as prescribed in Article 6 of the ICESCR as well as in the enjoyment of her right to work, free choice of employment and protection against unemployment under Article 5 of the CERD. The Chamber found it established that the real reason for the termination was the fact that the applicant did not flee to territory held by the Army of the Republic of Bosnia and Herzegovina and held that this constituted unjustified differential treatment.

*Article 6 of the Convention*

The Chamber found that the delay in transmitting the case from the Municipal Court to the second instance court violated the applicant's right to a hearing within a reasonable time. The Chamber found that the judgment of the Municipal Court, stating that the termination was lawful because the applicant had "put herself on the side of the aggressor," added a substantial new argument to the initial reasoning of the school which could not be refuted by the applicant in the course of the hearing, and thus that the trial could not be considered as fair within the meaning of Article 6.

**Remedies**

The Chamber ordered the Federation to pay the applicant KM 12,886 by way of compensation for lost income and for legal expenses.

*Decision adopted 3 April 2000*

*Decision delivered 7 April 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/51                             |
| <b>Applicant:</b>        | Marija STANIVUK                      |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 June 1999                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, of Serb descent, ran a barbershop in Sarajevo before the war, but lived in Grbavica. On 12 July 1991 she had concluded a rental contract with Sarajevostan (the municipal/cantonal institution responsible for the maintenance of state-owned property) for the use of the premises for an indefinite period. During the war she was unable to cross the front lines from her home to her shop. After the war she was prevented from re-entering her shop by R.M., a Bosniak who was now running a barbershop at that location. A temporary lease for the barbershop had been contracted between the Municipality of Novo Sarajevo and R.M. and signed on 10 December 1994. The term of this lease was to run until one year after the cessation of the war. The applicant appealed to the Municipality of Novo Sarajevo on 6 May 1996 to request her reinstatement into the premises at issue, and initiated court proceedings to the same end. These proceedings had been pending since 1996 and had been repeatedly adjourned.

### **Admissibility**

Finding that it was not established that any effective domestic remedy was available to the applicant, the Chamber declared the application admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber found there to be a dispute regarding the applicant's "civil rights" within the meaning of Article 6 paragraph 1, but found no evidence that the Sarajevo Municipal Court had been partial in the examination of the applicant's action. The Chamber concluded, however, that the trial had lasted beyond a reasonable time, as her case had remained pending for a period of three years and had involved ten hearings. It also noted that a speedy outcome of the dispute would have been of particular importance to the applicant, as the question concerned her livelihood. Thus the Chamber found a violation of Article 6.

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

The Chamber found that the applicant's business enterprise, including her rights under the lease, were economic assets constituting her "possessions" within the meaning of Article 1 of Protocol No. 1. By withholding the business premises in violation of its obligation under the lease, the Municipality of Novo Sarajevo had therefore interfered with the applicant's rights under that provision. Although the premises could justifiably have been allocated to R.M. in the situation prevailing during the war, the lease with the applicant was never legally terminated after the war ended. As a result, the refusal of the Municipality of Novo Sarajevo to allow the applicant to return to the premises was not "subject to the conditions provided for by law" as required by Article 1 of Protocol No. 1. Thus the Chamber found a violation of Article 1 of Protocol No. 1.

## **Remedies**

The Chamber ordered the Federation to reinstate the applicant into her business premises and to pay her compensation for lost income during the period from January 1997 up to and including June 1999 in the amount of KM 7,500. It ordered further compensation for lost income in the amount of KM 250 per month for each month starting on 1 July 1999 in which the applicant was not yet reinstated into her business premises, and KM 1,000 for legal expenses.

*Decision adopted 13 May 1999*

*Decision delivered 11 June 1999*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the application should have been declared inadmissible because the appropriate domestic remedies had not yet proved ineffective; that there had been no violation of Article 6; and that there had been no violation of Article 1 to Protocol No. 1. The Chamber found that the case did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance, and that the whole circumstances did not justify reviewing the decision. Thus the Chamber decided to reject the request for review.

*Decision adopted 9 September 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/58                             |
| <b>Applicant:</b>        | Dužanka ONIĆ                         |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 February 1999                     |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant holds an occupancy right over an apartment in Sarajevo. Following a family visit to Grbavica in May 1992 she was unable to return to her apartment due to the hostilities. In 1993 the apartment was declared abandoned and temporarily allocated to L.O. In 1996 the applicant's claim for repossession of the apartment was rejected as being out of time under the old Abandoned Apartments Law. In July 1998 the applicant received a decision under the new Abandoned Apartments Law, confirming her occupancy right, entitling her to repossess the apartment and ordering L.O.'s eviction within 90 days. L.O. was nevertheless considered to be in need of alternative accommodation pursuant to the new Abandoned Apartments Law. In September 1998 the applicant lodged a request seeking enforcement of the July 1998 decision, but never received a decision.

### Admissibility

Noting that the applicant's apartment was declared abandoned prior to 14 December 1995 but that the applicant's complaint related to a situation which had continued beyond that date, the Chamber decided that it was competent *ratione temporis* to examine the case. The Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but [also] in practice, failing which they will lack the requisite accessibility and effectiveness. ...[M]oreover,...in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system...but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants." Satisfied that the applicant in this case could not be required to exhaust any further remedy provided by domestic law, the Chamber declared the application admissible.

### Merits

#### *Article 8 of the Convention*

The Chamber referred to its case law in *Kevešević*, establishing that an applicant's links to his/her pre-war apartment were sufficient for that apartment to be considered his/her "home" for the purposes of Article 8 paragraph 1 of the Convention. The Chamber found that the authorities' refusal to allow the applicant to return to her apartment was an ongoing interference with her right to respect for her home within the meaning of Article 8. As in *Kevešević*, the Chamber found that the provisions of the old Abandoned Apartments Law, as applied also in the present case, had failed to meet the standards of a "law" for the purposes of Article 8. As to the application of the new Abandoned Apartments Law, the Chamber noted that the July 1998 decision in the applicant's favour had not yet been executed. The Chamber did not find it established that the applicant had been notified, at least 30 days before the end of L.O.'s ninety-day period for vacating the apartment, of any documented exceptional circumstances warranting an extension of the latter time limit pursuant to Article 7 paragraph 3 of the new Abandoned Apartments Law. Accordingly, the procedure under the new Abandoned Apartments Law had not been "in accordance with the law" either. In sum, Article 8 had been violated, given both the refusal under the old Abandoned Apartments Law to allow the applicant to return to her apartment and the failure to execute the July 1998 decision pursuant to the new Abandoned Apartments Law entitling her to return.

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

The Chamber reaffirmed that an occupancy right can be regarded as a “possession” within the meaning of Article 1 of Protocol No. 1. As in *Kevešević*, the Chamber found that a decision to declare abandoned an apartment over which someone enjoys an occupancy right, and the allocation thereof to another person pursuant to the old Abandoned Apartments Law, amounted to *de facto* expropriation which was not “subject to the conditions provided for by law” as required by Article 1 of Protocol No. 1. Accordingly, this provision had been violated by the authorities’ effective refusal under the old Abandoned Apartments Law to recognise the applicant’s occupancy right and to allow her to return to her apartment. The Chamber further found that the non-enforcement of the July 1998 decision entitling the applicant to return had not been “subject to the conditions provided for by law,” and thus was also in violation of Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Federation to take all necessary steps to enable the applicant to return swiftly to her apartment.

**Concurring Opinion**

Noting that an occupancy right cannot be lost by a weekend family visit, Mr. Vlatko Markotić and Mr. Želimir Juka attached a concurring opinion in which they stated their opinion that the applicant was not obliged to reacquire her occupancy right as she had never lost it to begin with.

*Decision adopted 12 January 1999*

*Decision delivered 12 February 1999*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/59                             |
| <b>Applicant:</b>        | Nail RIZVANOVIĆ                      |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 June 1998                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

On 4 August 1993, the District Military Court in Zenica convicted Mr. Nail Rizvanović of the murders of a mother and father in Rebrovac and the rape and attempted rape of their two teenage daughters on 17 June 1993 and sentenced him to death for those acts. All subsequent appeals (to the Supreme Court, District Military Court, and Presidency) to lift the death sentence were denied. On 9 August 1997, Mr. Rizvanović sought assistance from the Chamber, which issued a provisional measure ordering the Federation to suspend execution of the sentence while the Chamber considered the case.

### **Admissibility**

On 25 May 1998, the Federation submitted its observations to the Chamber in response to Mr. Rizvanović's request for monetary compensation for the fear he suffered due to his death sentence. The Federation maintained that domestic remedies had not been exhausted because Mr. Rizvanović's request for pardon and request for the mitigation of a sentence were still pending. The deadline for submission of observations, however, was 10 November 1997, so the Chamber refused to consider the Federation's objections to admissibility. Moreover, the Chamber reasoned that mere initiation of proceedings for pardon and mitigation of sentence could not guarantee that Mr. Rizvanović would be spared the death penalty. Thus the Chamber declared the application admissible insofar as it related to violations which were alleged to have occurred or have been threatened to occur since 14 December 1995.

### **Merits**

#### *Protocol No. 6 to the Convention*

Article 1 of Protocol No. 6 to the Convention abolishes the death penalty. However, Article 2 of the same Protocol qualifies this abolition by permitting states to "apply" the death penalty for acts committed in time of war, provided that the penalty be carried out "only in the instances laid down in the law and in accordance with its provisions." This provision is not applicable because Mr. Rizvanović was sentenced to death under a statute not restricted to wartime acts. Furthermore, the word "apply" in Protocol No. 6 refers to the imposition as well as the execution of the death penalty. Since no state of war existed at the time of the Chamber's consideration, Article 2 of Protocol No. 6 is inapplicable.

#### *Article 2 of the Convention*

Article 2 paragraph 1 of the Convention prohibits the death penalty "save in the execution of a sentence of a court...." In keeping with *Damjanović*, the Chamber found that such a "court" must be independent and impartial. In this case, the judges of the District Military Court could be appointed and dismissed by the Presidency at the behest of the Ministry of Defence. In view of this, the Chamber could not regard the District Military Court that had convicted Mr. Rizvanović as a "court" under Article 2 paragraph 1.

## **Remedies**

The Chamber ordered the Federation not to execute the death sentence against Mr. Rizvanović, to lift the death sentence against him, and to pay him DEM 3,000 in compensation for non-pecuniary damages. The Chamber denied Mr. Rizvanović compensation for legal expenses because he had failed to supply supporting evidence for this claim.

## **Dissenting/Concurring Opinions**

Mr. Rona Aybay attached a concurring opinion offering an alternative interpretation of Article 2 of Protocol No. 6 to the Convention. Mr. Aybay argued that Protocol No. 6 establishes a subjective and justiciable right not to be executed in time of peace, and thus that states party to Protocol No. 6 are under an obligation not to execute any death sentence after the termination of “time of war or imminent threat of war.”

Mr. Hasan Balić attached a dissenting opinion in which he argued that there was no legal ground to award compensation.

*Decision adopted 11 June 1998*

*Decision delivered 12 June 1998*

## **DECISION ON REQUEST FOR REVIEW**

The applicant submitted a request for review in which he referred to *Damjanović* and contested the amount and type of compensation awarded as well as the method used to decide his claim. The respondent Party submitted a request for review in which it argued that effective domestic remedies for obtaining a pardon were available; that the applicant had failed to exhaust those remedies; and that the applicant had violated the six-month rule. The Chamber did not find that the applicant's request raised a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As for the respondent Party's request, the Chamber found that because the respondent Party did not raise its objections during the ordinary course of the proceedings, the Chamber did not consider that the whole circumstances justified reviewing the decision. Thus, as neither request met the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 13 November 1998*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/97/60 et al.   |
| <b>Applicants:</b>         | Andrija MIHOLIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “Article 3a JNA Case”   |
| <b>Date Delivered:</b>     | 7 December 2001   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

These cases concern the attempts of the applicants, who were members of the JNA, to regain possession of apartments in Bosnia and Herzegovina. All of the applicants entered into purchase contracts with the JNA for apartments sometime between November 1991 and March 1992. All of the applicants initiated administrative proceedings before the relevant authorities to regain possession of the respective apartments. In all of these cases, the relevant authorities denied their requests for repossession. In three cases, the applicants had appeals pending before cantonal courts. The applicants were unable to repossess their apartments as a result of the application of Article 3a of the new Abandoned Apartments Law in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right.

Article 3a of the new Abandoned Apartments Law prevents persons who were in active military service with the JNA on 30 April 1991, who were not citizens of Bosnia and Herzegovina as of that date, and who had not been granted refugee or other equivalent protective status in a country outside of the former Socialist Federal Republic of Yugoslavia from repossessing apartments in Bosnia and Herzegovina on the ground that they are not considered refugees. Additionally, persons who remained in active military service of any armed forces outside the territory of Bosnia and Herzegovina after 14 December 1995 are barred from repossessing apartments in Bosnia and Herzegovina on the same ground. At the time of consideration, the applicants had applications pending before the Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC”).

### Admissibility

The Chamber noted that the matters the applicants complained of were not within the responsibilities of Bosnia and Herzegovina. However, the Chamber found that the applicants’ claims, at their inception, stemmed from a 22 December 1995 Decree, which annulled all JNA contracts and which was issued by the Presidency of the Republic of Bosnia and Herzegovina and adopted as law by the Assembly of the Republic. As the applicants alleged that the effects of that Decree had been ongoing, the Chamber declared the applications admissible with respect to Bosnia and Herzegovina.

As for the Federation, the Chamber first held that, Article 3a of the new Abandoned Apartments Law being a provision of the Federation law, the Federation was the appropriate respondent Party for allegations of violations resulting from the application of Article 3a by Federation authorities. Second, the Chamber noted that even if the applicants had sought to avail themselves of further domestic remedies available to them, they would have had no prospect of success, and thus that the applicants could not be required to exhaust any further domestic remedies. Third, the Chamber recalled its prior decision that applicants’ pending claims before the CRPC did not preclude the Chamber from examining the applications. Thus the Chamber declared the applications admissible against the Federation.

## **Merits**

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

The Chamber recalled that the rights under a contract to purchase an apartment concluded with the JNA constituted “possessions” for the purposes of Article 1 of Protocol No. 1 to the Convention. Next, the Chamber found that the effect of the Decree of 22 December 1995 was to annul the applicants’ rights under their purchase contracts, and that the new Abandoned Apartments Law and the Law on Sale of Apartments with an Occupancy Right continued to deprive the applicants of their rights. Thus, each applicant was “deprived of his possessions” and received differential treatment. Next, even if the reasons given by the Federation for this deprivation (the pressing need to provide housing for war veterans and their families) were “legitimate aims,” the Chamber would need to find a reasonable relationship of proportionality between the means employed and the aims sought to be realised in order not to find a violation.

After a close examination of the provisions of Article 3a of the new Abandoned Apartments Law, the Chamber considered that there was no reasonable relationship of proportionality with respect to the differential treatment experienced by the applicants and the accomplishment of the Federation’s stated goals (i.e. to provide housing for war veterans and their families). Therefore, the Chamber found that Bosnia and Herzegovina had violated the applicants’ rights under Article 1 of Protocol No. 1, and that the Federation had violated the applicants’ right under Article 1 of Protocol No. 1 and had discriminated against them in the enjoyment of this right.

### *Article 8 of the Convention*

In view of its finding under Article 1 of Protocol No. 1 to the Convention the Chamber found it unnecessary to examine whether there had also been a violation under Article 8.

### *Article 6 of the Convention*

In view of its decision concerning Article 1 of Protocol No. 1 to the Convention and discrimination in enjoyment of the rights protected therein, the Chamber considered that it was not necessary to examine the cases under Article 6.

### *Article 13 of the Convention*

In view of its decision concerning Article 1 of Protocol No. 1 to the Convention and discrimination in the enjoyment of the rights protected therein, the Chamber considered that it did not have to examine the cases under Article 13.

## **Remedies**

The Chamber ordered the Federation to take all necessary steps to render ineffective the annulments of the contracts of all five applicants, and to allow for registration of ownership of their apartments. For two of the applicants, the Chamber ordered the Federation to take all necessary steps to enable them to regain possession of their apartments.

## **Dissenting/Concurring Opinions**

Mr. Manfred Nowak, joined by Ms. Michèle Picard, attached a partly dissenting opinion in which he disagreed with the finding that the interference with the right to property of the applicants who had remained in the active service of the JNA during the war and in active service of the Army of the Federal Republic of Yugoslavia subsequently was unproportional or even discriminatory. Mr. Nowak argued that such an interference fell within the broad margin of appreciation which governments enjoy under Article 1 of Protocol No. 1 to the Convention.

Mr. Hasan Balić attached a partly dissenting opinion in which he argued that the respondent Party, for the purpose of protection of legitimate interests of its citizens and the rights to its property which was still socially owned property, was entitled to pass legislation that would protect such property until it was accessible to all the citizens under equal footing; and that the applicants had not suffered discrimination in their right to peaceful enjoyment of possessions.

Mr. Dietrich Rauschnig attached a concurring opinion in which he argued that it was conceivable that some of the applicants had ownership of the apartments but were not entitled to use them.

*Decision adopted 9 November 2001*

*Decision delivered 7 December 2001*

## **DECISION ON REQUEST FOR REVIEW AND ON MOTION FOR THE RENEWAL OF PROCEEDINGS**

The Federation submitted a motion for the renewal of proceedings. The Chamber found that the part of the motion, where the Federation argued that the Chamber erred in its decision on admissibility and merits, was, in fact, a request for review. Referring to *Čegar* and *Softić*, in which the Chamber decided that the Chamber's Rules of Procedure "only provide for a review, in certain defined circumstances, of decisions issued by a Panel" and "do not provide for any review of decisions of the plenary Chamber in any circumstances", the Chamber decided not to accept the motion for the renewal of proceedings insofar as it is a request for review.

In its motion for the renewal of proceedings, the Federation argued further that the Chamber should renew the proceedings for the consideration of the applications. The Federation in essence advanced two grounds on which it argued that the composition of the Chamber when it decided on the applications was so seriously flawed as to justify a re-opening of the cases.

The first argument was that one Member of the Chamber should have been disqualified from deciding on the applications because (i) he violated the duty of confidentiality by leaking a copy of the Chamber's decision to the Republika Srpska Ministry of Defence, and (ii) he had a personal interest in the cases or acted as advisor to one of the Parties. The Chamber noted that while the Federation had in fact submitted evidence of the leak of confidential information, it had not established any appreciable connection between the leak and the Member whose disqualification it, *ex post facto*, sought. Moreover, the Chamber noted that even if it had been established or only made credible that a Member leaked information on an adopted but not yet delivered decision to a third party, this fact would fall short of justifying re-opening the case.

The second argument was the assertion that the Chamber purposefully considered the case in plenary so as to deprive the respondent Parties of the possibility to appeal against the decision, thereby violating the Convention and putting itself in contradiction with the practice of the European Court of Human Rights. The Chamber noted that the fact that an application may be decided by the plenary Chamber in first instance cannot be said to be in violation of any right enshrined in the Convention and the Protocols thereto. The Chamber pointed out that Article 2, paragraph 1 of Protocol No. 7 to the Convention specifically provides for the right of appeal in criminal matters only. In addition, the Chamber observed that it is under no obligation to follow the procedure of the European Court. However, the Chamber noted that the provisions of the Human Rights Agreement and the Chamber's Rules of Procedure are very similar to the rules governing the proceedings before the European Court. Finally, the Chamber argued that it complied with the provisions governing the proceedings before the Chamber.

*Decision adopted 8 February 2002*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/62                             |
| <b>Applicant:</b>        | Dragan MALČEVIĆ                      |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 8 September 2000                     |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant, a citizen of Bosnia and Herzegovina of Croat origin, was the occupancy right holder over an apartment in Vareš, the Federation. During the war, he and his family left the apartment. In 1993 the apartment was declared abandoned under the old Abandoned Apartments Law. Beginning in February 1996, the applicant pursued various administrative and judicial remedies to regain the apartment, including filing a claim under the new Abandoned Apartments Law, all without success. In October 1997 the apartment was allocated to another user, who remained in the apartment at the time of the Chamber's consideration. The applicant had submitted a claim to the CRPC on 21 February 1997. His claim before the CRPC was examined in a decision of 28 October 1999, which stated that the applicant was the occupancy right holder over the apartment and had the right to repossess it. However, this decision was not enforced.

### Admissibility

Having pursued them for more than four years without success, the Chamber concluded that the domestic remedies available to the applicant were ineffective, and declared the application admissible.

### Merits

#### *Article 8 of the Convention*

Noting that in *Kevešević* it had previously found that the provisions of the old Abandoned Apartments Law failed to meet the standards of law as this expression is understood for the purposes of Article 8, the Chamber found that this provision was violated by virtue of the authorities' effective refusal after 14 December 1995 to allow the applicant to return to his apartment. With respect to the new Abandoned Apartments Law, the authorities had failed to decide on any of the applicant's complaints. Further, he had not received a decision regarding the execution of the CRPC decision. In both instances, the failure to make a decision was contrary to time-limits established by law. Therefore, the proceedings had not been concluded in accordance with the law, and there had been a violation of the right of the applicant to respect for his home as guaranteed by Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8 of the Convention, the Chamber found that the Federation's interference with the applicant's right to respect for his home was contrary to the law, and thus that there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

While the applicant was expeditious in his pursuit of the various procedures available to him, the authorities of the Federation did not act in accordance with its own laws and procedures in an effort to decide these proceedings and offered no explanation for the delays. The Chamber concluded that the length of the proceedings had exceeded a "reasonable time" and therefore that the Federation had violated the applicant's rights under Article 6.

## **Remedies**

The Chamber ordered the Federation to reinstate the applicant into his apartment as soon as possible and to pay him KM 13,250 for rent the applicant could have earned for the period that the Federation could be held responsible for his not being able to enter the apartment, and KM 1,750 for legal expenses. Further, the Federation was ordered to pay the applicant KM 250 for each month he would continue to be unable to enter his apartment starting 1 October 2000.

*Decision adopted 4 September 2000*

*Decision delivered 8 September 2000*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for a review in which it disputed the award of monetary relief made in favour of the applicant. Finding that it involved neither a serious issue affecting the interpretation of the Human Rights Agreement nor an issue of general importance, the Chamber decided to reject the request for review.

*Decision adopted 9 November 2000*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/97/63 et al.   |
| <b>Applicants:</b>         | Zijad ŠEĆERBEGOVIĆ et al.                                       |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “4 JNA Cases”   |
| <b>Date Delivered:</b>     | 11 June 1999  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

In 1992 the applicants contracted to buy apartments from the JNA. The contracts were annulled by legislation passed shortly after the Dayton Peace Agreement entered into force. The applicants complained, in particular, that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention. Furthermore, they alleged that their right to access to court under Article 6 of the Convention was violated by Presidential Decree of 3 February 1995 ordering the courts to adjourn all proceedings for the registration of ownership of apartments bought from JNA.

### **Admissibility**

As for the Federation’s argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### **Merits**

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

Reaffirming its previous case-law, the Chamber found that at the time the legislation was passed, the applicants had rights under their purchase contracts which were “possessions” for purposes of Article 1 of Protocol No. 1. The effect of the legislation was to annul those rights and to deprive the applicants of their possessions and to cause the applicants to bear an “individual and excessive burden.” Thus there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in previous JNA cases, that the court proceedings relating to registering ownership of the apartments either were or would have been adjourned shortly after the Presidential Decree of 3 February 1995 entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants’ right of access to court within a reasonable time for the purpose of having their civil claims determined. Thus there had been a violation of Article 6.

### **Remedies**

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1, but that the matters with which the legislation deals with are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take all necessary steps to render ineffective the annulment of the contracts; to lift the

compulsory adjournment of court proceedings aiming at recognition of the applicants' property rights; and to secure their right of access to court and a hearing within a reasonable time.

### **Concurring Opinion**

Mr. Dietrich Rauschnig attached a concurring opinion in which he discussed what he found to be the more compelling reasons for reaching the Chamber's conclusions.

*Decision adopted 16 April 1999*

*Decision delivered 11 June 1999*

### **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review in which it argued that the Chamber lacked competence *ratione temporis* to examine the case and that the Chamber had failed to consider the argument that the impugned acts resulted from the Federation's obligations under the CERD. The Chamber noted that these arguments had repeatedly been raised and rejected by the Chamber. Therefore, as the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 6 September 1999*

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| <b>Case No.:</b>           | CH/97/65  |
| <b>Applicant:</b>          | Milosava PANIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 14 May 1999   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

In 1992 the applicant's husband contracted to purchase an apartment in Sarajevo from the JNA. While the applicant and her husband were in Belgrade for the husband's medical treatment, the General Staff of the Army of the then Republic of Bosnia and Herzegovina declared the apartment temporarily abandoned. The applicant and her husband returned in February 1996 and requested reinstatement into their apartment. In May 1996 the General Staff of the Army declared the apartment permanently abandoned pursuant to the old Abandoned Apartments Law. In July 1998 the applicant applied for reinstatement under the new Abandoned Apartments Law, but received no response.

### Admissibility

Noting that regarding the issue of the JNA contract there was no effective remedy available to the applicant and that regarding the issue of the abandoned property the applicant had exhausted domestic remedies, the Chamber declared the application admissible.

### Merits

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

As in *Medan*, the Chamber found that, as of December 1995, when the Presidential Decree stating that contracts for the sale of apartments and other property that had been concluded on the basis of the Law on Securing Housing for the JNA were retroactively invalid came into force, the applicant had rights under her purchase contract which were "possessions" for the purposes of Article 1 of Protocol No. 1. The effect of the Decree was to annul those rights and deprive the applicant of her possessions. As in *Medan* and *Grbavac*, the Chamber found that the applicant had been made to bear an "individual and excessive burden" and thus there had been a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted that any court proceedings which the applicant would have initiated for the purpose of having her ownership of the apartment registered would have been adjourned shortly after the February 1995 Presidential Decree ordering courts to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA entered into force. The Chamber found that up to 1998 there had been a deprivation of the applicant's right of access to court and to a hearing within a reasonable time. Accordingly, the Chamber found a violation of Article 6.

#### *Article 8 of the Convention*

The Chamber recalled its finding in *Kevešević* that the provisions of the old Abandoned Apartments Law, as applied also in the present case, failed to meet the standards of a "law" for purposes of Article 8. Thus, Article 8 was violated by the decision of May 1996 to declare the apartment permanently abandoned. The applicant's repossession claim had not been finally examined in

compliance with a time-limit established by the new Abandoned Apartments Law. There had thus been an ongoing violation of her Article 8 right to respect for her home in that the procedure for examining her repossession claim had not been “in accordance with the law.”

### **Remedies**

The Chamber considered the State responsible for having passed the legislation resulting in the breach of Article 1 of Protocol No. 1 to the Convention, but found that the matters were now within the responsibility of the Federation which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. Thus the Chamber ordered the Federation to take all necessary steps to: render ineffective the annulment of the contract; lift the compulsory adjournment of court proceedings aiming at formal recognition of the applicant's property right; and secure her right of access to court and a hearing within a reasonable time. The Chamber also ordered the Federation through its authorities to take immediate steps to reinstate the applicant into her apartment.

*Decision adopted 14 April 1999*

*Decision delivered 14 May 1999*

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| <b>Case No.:</b>           | CH/97/67  |
| <b>Applicant:</b>          | Sakib ZAHIROVIĆ   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 8 July 1999   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He worked for approximately 30 years as a driver for the Livno-Bus Company in Livno, Canton 10, the Federation. During the Bosniak-Croat conflict in July 1993 he was no longer allowed to come to work but was placed on a "waiting list" together with 51 other employees of Bosniak origin. The company paid certain compensation to the applicant and the others on the waiting list until June 1997. It continued to pay contributions for them to the pension and social security funds until January 1994. In 1996 the company offered formal employment contracts to some 40 persons of Croat origin who had "temporarily" taken over the duties of the applicant and his Bosniak colleagues during the hostilities. In July 1997 the applicant and his colleagues initiated proceedings before the Municipal Court in Livno, requesting to be reassigned to their posts and to be awarded pecuniary compensation. In January 1999 the applicant was offered work as a doorman or mechanic at the company but rejected the offer. At the time of Chamber's consideration, no judgment had been delivered.

### Admissibility

#### *Scope of the case*

Noting that the applicant did not submit a joint application including his Bosniak colleagues in the company facing similar circumstances, the Chamber examined the application only insofar as it related to the applicant alone.

#### *Ratione personae*

While noting that the applicant submitted his application against the Federation alone, the Chamber reaffirmed that it is not restricted by the applicant's choice of respondent Party. However, the Chamber found it impossible to attribute any of the company's actions or omissions to the State, and decided that the application could not be considered to raise matters attracting its responsibility. As for the Federation, the Chamber noted that public bodies for which the Federation is responsible had a direct influence on any acts and omissions of the company, and decided that the Federation could be held responsible for the acts in question.

#### *Ratione temporis*

Noting that the applicant was placed on the waiting list prior to 14 December 1995 but remained thereon after this date, the Chamber found that the applicant's grievance in respect of his placement on the waiting list and inability to go back to work fell within the Chamber's competence. Insofar as the application related to the company's decision to stop paying the applicant's salary, the Chamber found that it lacked competence, but found that it was competent to examine the fact that the applicant's salary and related contributions had not been paid after 14 December 1995. The Chamber also found that it was competent to examine any act or omission on the part of the authorities for which the Federation was responsible insofar as such act or omission occurred or continued after 14 December 1995.

## **Merits**

### *Discrimination*

The Chamber found that public organs for which the Federation was responsible had had a direct influence on the acts and omissions of the Livno-Bus Company. Noting that only workers of Bosniak origin had remained on the waiting list and that roughly 40 workers of Croat origin had been employed or recruited as drivers, the Chamber found that the continued placement of the applicant on the waiting list of the company, after the entry into force of the Dayton Peace Agreement, had subjected him to differential treatment in comparison with his colleagues of other ethnic or national origins. Insofar as this treatment had continued after the particular war-related circumstances had ceased to exist, the Chamber found no evidence that it had been objectively justified in pursuance of a legitimate aim. The Chamber concluded that the authorities of the Livno Municipality and Canton 10 had either actively discriminated against the applicant or at least passively tolerated discrimination against him in the enjoyment of his right to work and just and favourable conditions of work, as guaranteed by Articles 6 and 7 of the ICESCR, due to his Bosniak origin.

### *Article 6 of the Convention*

The Chamber recalled the *D.M.* case in which it noted the apparent practice in Canton 10 that only members or sympathisers of the ruling Croat party were appointed to judicial office and that political pressure was exerted on them. An objective observer could therefore legitimately doubt that the Livno Municipal Court was an “independent” tribunal within the meaning of Article 6, paragraph 1. The Chamber concluded that the Livno Municipal Court could not be regarded as independent of political influence when examining the applicant's civil action. Accordingly, his rights under Article 6 had been violated in that the tribunal in question lacked independence for the purposes of Article 6 paragraph 1.

## **Remedies**

The Chamber ordered the Federation to undertake immediate steps to ensure that the applicant was no longer discriminated against in his right to work and to just and favourable conditions of work, and that he was offered the possibility of resuming his work on terms commensurate with his qualifications and equal to those enjoyed by other employees of the company. Further, the Chamber ordered the Federation to take all necessary steps to ensure that the applicant's civil action against the Livno-Bus Company was examined by an independent and impartial judiciary, and to pay to the applicant a lump sum of KM 24,000 for moral and pecuniary damage.

## **Dissenting Opinions**

Mr. Dietrich Rauschning attached a partly dissenting opinion in which he argued that the Chamber had not established sufficient evidence to conclude that the Municipal Court of Livno in the deciding Panel was not independent in dealing with this case.

Mr. Želimir Juka attached a lengthy dissenting opinion in which he argued that in light of the economic difficulties in Bosnia and Herzegovina only if the Federation had refused to make use of international economic relief in accordance with the international conventions for the protection of human rights would the Chamber have been competent to find a violation. He also argued that the Federation was not responsible for the acts of the Livno-Bus Company.

*Decision adopted 10 June 1999*

*Decision delivered 8 July 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/69                             |
| <b>Applicant:</b>        | Borislav HERAK                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 June 1998                         |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

On 16 May 1992, Mr. Borislav Herak was conscripted into the Bosnian Serb armed forces. He was arrested by the Army of the Republic of Bosnia and Herzegovina on 11 November 1992. On 12 March 1993, Mr. Herak was convicted by the District Military Court in Sarajevo on war crimes charges. The Court sentenced Mr. Herak to death. Mr. Herak appealed the decision on 27 April 1993, and the verdict was upheld by the Supreme Court. On 25 May 1994, Mr. Herak's father submitted a request for a pardon to the Presidency of Bosnia and Herzegovina, but no decision was made on the request.

### Admissibility

Noting that the respondent Party did not suggest that any effective remedy was available to the applicant, the Chamber declared the application admissible insofar as it related to violations of the applicant's human rights which were alleged to have occurred or were threatened to occur since 14 December 1995.

### Merits

#### *Protocol No. 6 to the Convention*

Article 1 of Protocol No. 6 to the Convention abolishes the death penalty. However Article 2 of the same Protocol qualifies this abolition by permitting states to "apply" the death penalty for acts committed in time of war, provided that the penalty be carried out "only in the instances laid down in the law and in accordance with its provisions." The Chamber found that this provision was inapplicable because Mr. Herak was sentenced to death under a statute not restricted to wartime acts. Furthermore, the word "apply" in Protocol No. 6 refers to the imposition as well as the execution of the death penalty; since no state of war existed at the time of the Chamber's consideration, Article 2 was inapplicable. Thus there was a violation of Article 1 of Protocol No. 6.

#### *Article 2 of the Convention*

Article 2 paragraph 1 of the Convention prohibits the death penalty "save in the execution of a sentence of a court...." In keeping with *Damjanović*, such a "court" must be independent and impartial. In this case, the judges of the District Military Court could be appointed and dismissed by the Presidency at the behest of the Ministry of Defence. Thus the Chamber could not regard the District Military Court that convicted Mr. Herak as a "court" under Article 2 paragraph 1. Although Mr. Herak's case was heard on appeal before two panels of the Supreme Court, that Court did not investigate the facts or hear witnesses. The appeal did not suffice to remedy the defects arising in relation to the structure and composition of the Military Court that tried the case at first instance. Thus there was a violation of Article 2.

### Remedies

The Chamber ordered the respondent Party not to carry out the death sentence on the applicant, to lift the death sentence and to report to it within one month on the steps taken by it to give effect to

these orders. The Chamber rejected the applicant's claim for compensation because it was submitted out of time.

### **Concurring Opinion**

Mr. Rona Abyay attached a concurring opinion in which he argued that Protocol No. 6 to the Convention established a subjective and justiciable right not to be executed in time of peace. He argued that states party to Protocol No. 6 are under an obligation not to execute any death sentence after the termination of "time of war or imminent threat of war" even in cases where the death sentence had already been pronounced before the termination of "time of war or imminent threat of war."

*Decision adopted 11 June 1998*

*Decision delivered 12 June 1998*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the applicant was not at risk of having the sentence carried out against him, as there were legal remedies available to the applicant which he had not used, and that the pardon procedure initiated by the applicant's father was not yet concluded. The respondent Party also claimed that the Chamber should not have examined the independence of the District Military Court who passed the original decision convicting the applicant, as that decision was passed prior to the entry into force of the Dayton Peace Agreement. The Chamber found that at no stage of the proceedings did the respondent Party submit any observations on the admissibility or merits of the case. The Chamber therefore did not consider that the whole circumstances justified reviewing the decision or that the case raised a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 13 November 1998*

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| <b>Case No.:</b>           | CH/97/70  |
| <b>Applicant:</b>          | Ćazim LAČEVIĆ   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 7 October 1999  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant exchanged his house in Montenegro for a JNA apartment in Sarajevo which had been purchased by another person from the Army Housing Fund in December 1991. In January 1992 the applicant concluded the exchange contract with the other person and shortly afterwards the other person moved into the house in Montenegro and the applicant's daughter's family moved into the apartment in Sarajevo. The applicant also moved to the apartment in September 1992. Neither the other person nor the applicant had their respective ownership recognized or entered into the Land Register. In September 1992 the apartment in Sarajevo was declared abandoned. The applicant and his family were threatened by the Army Housing Fund with eviction throughout and after the war, until the beginning of 1998.

### Admissibility

The Federation argued that the applicant failed to exhaust domestic remedies by not contesting the decision to declare his apartment abandoned and by failing to have the exchange contract confirmed by a court. The Chamber considered that with regard to the decision to declare the apartment in question abandoned, the question of the exhaustion of domestic remedies was moot, as such decisions were declared null and void under the new Abandoned Apartments Law. As to the applicant's alleged failure to have his exchange contract confirmed by a court, the Chamber noted that, at the end of 1991 and in the beginning of 1992, purchase contracts of JNA apartments were often not registered. Thus the Chamber found that the applicant could not be required to exhaust the domestic remedies referred to and declared the application admissible.

### Merits

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

The applicant became the owner of the apartment on the basis of the exchange contract with another person. The Chamber concluded that the right acquired by the other person in respect of the apartment was a "possession" for the purposes of Article 1 of Protocol No. 1, and a transferable asset. The Chamber found that, even though the applicant in this case had not purchased a "JNA apartment" himself but had come into possession of the apartment in question from a person who had concluded such a purchase contract, the applicant's property rights were comparable to those of the applicants in *Medan*. Thus the attempts to evict the applicant's daughter and her family from the apartment based on the non-recognition of the applicant's right to the apartment, constituted a violation of his rights under Article 1 of Protocol No. 1. The Federation, whose organs threatened the eviction, and the State, whose institutions passed the legislation which retroactively annulled the purchase contract of December 1991, were both responsible.

### Remedies

While the violation of Article 1 of Protocol No. 1 to the Convention arose from legislation the State was responsible for having passed, the matters which the legislation deals with are now within the responsibility of the Federation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to refrain from any act threatening the applicant and his family

with eviction from the apartment, and to permit the applicant to validly apply for registration as owner of the apartment.

*Decision adopted 4 October 1999*

*Decision delivered 7 October 1999*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Parties submitted separate requests for a review, but the Chamber considered them together as a single request. As for the respondent Parties' argument that the lack of registration of the exchange contract by the competent local court made it invalid, the Chamber found that the failure to register did not influence the contract's legal validity as the parties carried out the essential obligation contained in it. As for the argument that the new Abandoned Apartments Law would provide a domestic remedy for the applicant, the Chamber found that court proceedings would not have enabled the applicant to register as owner of the apartment in question and to peacefully enjoy his possessions. Thus the Chamber found that the request did not meet the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure and decided to reject the request for review.

*Decision adopted 9 December 1999*

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| <b>Case No.:</b>           | CH/97/73  |
| <b>Applicant:</b>          | Marija BOJKOVSKI  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date delivered:</b>     | 6 April 2001  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is the occupancy right holder of an apartment in Sarajevo. She left the apartment during the hostilities for reasons of her health and age. In an attempt to regain possession of her apartment, the applicant lodged an application with CRPC, which issued a decision recognising her occupancy right, but this decision was not executed.

### Admissibility

The Chamber did not receive any evidence which would tend to indicate that the State was responsible for any of the matters that the applicant complained of, and thus declared the case inadmissible *ratione personae* against the State. Noting that the applicant had already made repeated attempts to have her CRPC decision enforced, the Chamber found that the applicant could not be required to exhaust any further remedy provided by domestic law and declared the application admissible against the Federation.

### Merits

#### *Article 8 of the Convention*

The Chamber found that the result of the inaction of the Federation was that the applicant could not return to her home and that there was an ongoing interference with her right to respect for her home. Noting that under the Law on Implementation of the Decisions of the CRPC, 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, but that the applicant had received no decision on her request to have the CRPC decision enforced, the Chamber found that the failure of the competent administrative organ to decide upon the applicant's request was not "in accordance with the law" and thus that there was a violation of Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that the Federation was in violation of Article 1 of Protocol No. 1, as the interference with the applicant's possessions was not justified.

### Remedies

The Chamber ordered the Federation to pay the applicant KM 2,000 in recognition of the sense of injustice she suffered as a result of her inability to regain possession of her apartment, especially in view of the fact that she took all necessary steps to have the CRPC decision enforced. In accordance with its decision in *Pletilić*, the Chamber ordered the Federation to pay the applicant KM 100 to compensate for the loss of use of the apartment and any extra cost for each month the applicant has been forced to live in alternative accommodation.

*Decision adopted 2 April 2001*

*Decision delivered 6 April 2001*

**DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review disputing the award of monetary compensation made in favour of the applicant. The Chamber found that the award was in accordance with the Chamber's consistent case-law and was based on adequate grounds. Thus the Chamber found that the request did not meet the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure and decided to reject the request for review.

*Decision adopted 7 June 2001*

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|----------------------------|---|
| <b>Case No.:</b>           | CH/97/76  |
| <b>Applicant:</b>          | Irfan SOFTIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 12 October 2001   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant was working as a legal adviser for the Ministry of Trade and Tourism of the Republic of Bosnia and Herzegovina. This Ministry was transformed several times. On 21 January 1996 it became the Ministry for Foreign Trade and International Communications of the then Republic, and on 20 August 1996 of Bosnia and Herzegovina. The case concerns a decision of this Ministry by which the applicant's working relationship with the Ministry was to be regarded in retrospect as non-existent as of 1 February 1996, the date when he was transferred to the newly transformed Ministry. The applicant initiated lawsuits to gain payment of his salary for the unrecognised period of working time from the Ministry for Foreign Trade and Economic Relations of Bosnia and Herzegovina, successor to the Ministry for Foreign Trade and International Communications. The lawsuits were lodged before courts of the Federation.

### Admissibility

First, as regards *ratione personae*, the Chamber noted that organs of Bosnia and Herzegovina issued the relevant decisions on the basis of its legislation, and the applicant had employment relations with the authorities of Bosnia and Herzegovina, so the Federation could not be held responsible for acts of the authorities of Bosnia and Herzegovina concerning the applicant's employment relations with the Ministries. But since the courts of the Federation held hearings in proceedings initiated before them by the applicant, the Chamber could examine the Federation courts' conduct. Thus the Chamber considered the responsibility of Bosnia and Herzegovina only under Article 1 of Protocol No. 1 to the Convention and the Federation's responsibility only under Article 6 of the Convention.

Second, as regards exhaustion of domestic remedies, noting that the applicant had been a party to many hearings before the courts of the Federation in an effort to have his rights determined, and that he had been pursuing his claim for four years and it was still ongoing, the Chamber found that an effective remedy was not available to the applicant and that it could not find that the applicant had failed to exhaust effective domestic remedies.

Third, as regards his allegations of discrimination, the Chamber concluded that, as he did not allege that he was treated differently on relevant grounds, his complaint concerning discrimination was manifestly ill-founded.

In sum, the Chamber declared the application admissible in respect of the applicant's complaint under Article 1 of Protocol No. 1 in respect of Bosnia and Herzegovina and Article 6 in respect of the Federation; inadmissible in respect of the applicant's complaints regarding discrimination; and inadmissible with regard to the applicant's complaint against Bosnia and Herzegovina under Article 6 and against the Federation under Article 1 of Protocol No. 1.

### Merits

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

The Chamber considered that the decision to annul the applicant's formal transfer to the Ministry and the consequent denial of his claims to payment constituted a "deprivation" of his possessions. Bosnia and Herzegovina's annulment of the applicant's claim for payment of his salaries was not

subject to conditions provided for by law, and thus the Chamber found that Bosnia and Herzegovina had violated the rights of the applicant under Article 1 of Protocol No. 1.

*Article 6 of the Convention*

Noting that there had been numerous hearings, that the periods between them were quite long, and that the applicant's case was still pending without good reason, the Chamber found a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1 for which the Federation was responsible.

**Remedies**

The Chamber ordered Bosnia and Herzegovina to pay to the applicant KM 9,800 as compensation in respect of the established violation of Article 1 of Protocol No. 1 to the Convention. The finding of a violation by the Federation was considered as sufficient remedy for the breach of Article 6 of the Convention.

**Dissenting Opinion**

Mr. Jakob Möller attached a partly dissenting opinion in which he argued that the applicant's claim of discrimination had been sufficiently substantiated for the purpose of admissibility and should have been examined on the merits.

*Decision adopted 8 October 2001*  
*Decision delivered 12 October 2001*

**DECISION ON REQUEST FOR REVIEW**

Bosnia and Herzegovina submitted a request for review, in which it argued that the Chamber erroneously assessed the facts relating to the applicant's employment with the company Energoinvest and with the Ministry of Trade and Tourism of Bosnia and Herzegovina. Referring to Čegar in which the Chamber decided that the Chamber's Rules of Procedure "only provide for a review, in certain defined circumstances, of decisions issued by a Panel" and "do not provide for any review of decisions of the plenary Chamber in any circumstances", the Chamber decided reject the request for review.

*Decision adopted 7 December 2001*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/77                             |
| <b>Applicant:</b>        | Nurko ŠEHIĆ                          |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 5 November 1999                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin and owns a house in Livno. In July 1993 persons wearing uniforms of the Croatian Defence Council forcibly evicted him and his family from this house. Subsequently, a displaced person of Croat origin from Bugojno moved into the applicant's property. In November 1996 the applicant initiated proceedings before the judicial authorities in Livno, seeking to regain possession of his house. In March 1999 the applicant finally received a favourable decision from the Municipal Court in Livno, and he regained his property in September 1999. The applicant complained that due to his ethnic origin he was denied a fair hearing before an independent and impartial tribunal, his right to equality before the law and his right to respect for his home.

### Admissibility

Noting that the applicant's complaints focused on the court proceedings he began in November 1996 and on the ongoing violation of his right to his home and to peacefully enjoy his property that resulted from the ineffectiveness of these proceedings, the Chamber found that insofar as it concerned actions and omissions of the authorities of the respondent Party from November 1996 onwards the application was compatible with the Chamber's competence *ratione temporis*. Noting that the fact that the applicant regained possession of his property neither affected the Chamber's finding of admissibility nor meant that the case should be struck out on the grounds that the matter has been resolved because it did not effect the examination of possible human rights violations in any manner, the Chamber declared the application admissible.

### Merits

#### *Discrimination*

The Chamber found that the Cantonal Court in Livno pursued a deliberate policy of postponement of the proceedings and non-execution of decisions rendered regarding the applications of returning refugees attempting to repossess their homes. While the applicant's ownership of the house was never in dispute, his attempts to have the illegal occupant evicted and to regain control over that property were unsuccessful for a prolonged period, notwithstanding a significant number of hearings held, petitions and submissions filed by the applicant, and the involvement of domestic and international organizations.

The evidence before the Chamber suggested that the differential treatment was in retaliation for the discriminatory treatment to which refugees of Croat descent from Bugojno were allegedly subjected before the administrative and judicial authorities in Bugojno. The Chamber found that this reason did not constitute a legitimate aim that would justify the differential treatment. Thus the Chamber found that the applicant had suffered discrimination in the enjoyment of his rights under Articles 6, 8, and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention, and to equal protection of the law under Article 26 of the ICCPR.

*Article 6 of the Convention*

Given the protracted delays in the execution of the decisions in the applicant's favour, the Chamber found that the applicant's right to a fair hearing within a reasonable time was violated. In addition, it was reported that the judge in charge of the applicant's case before the Municipal Court in Livno expressly stated that in obstructing a solution of the applicant's case he was acting upon instruction of the President of the Municipal Council. The Chamber concluded that the judge had not acted "independently" in terms of Article 6 paragraph 1. A court that is not entirely independent of the political bodies cannot objectively comply with the requirement of impartiality. Thus there was a violation of Article 6.

*Article 8 of the Convention*

The Chamber found that the failure by the judicial authorities to evict the illegal occupant of the applicant's house was a failure on their part to ensure the applicant's right to his "home" within the meaning of Article 8 paragraph 1. Recalling that it had found that the lack of respect for the applicant's case was motivated by the general intent to obstruct the return of refugees and displaced persons, the Chamber concluded that the applicant's rights under Article 8 had been violated.

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

The Chamber found, for essentially the same reasons as given in the context of its examination of the case under Article 8 of the Convention, that the failure of the authorities to assist the applicant in recovering his property amounted to a breach of his rights under Article 1 of Protocol No. 1.

**Remedies**

Recalling *D.M.*, in which it awarded damages to a similarly situated applicant on the basis of her pain and suffering, the Chamber ordered the Federation to pay to the applicant KM 4,000 by way of compensation for non-pecuniary damage.

*Decision adopted 7 October 1999*

*Decision delivered 5 November 1999*

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| <b>Cases Nos.:</b>         | CH/97/81 et al.   |
| <b>Applicants:</b>         | Miro GRBAVAC et al.   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “27 JNA Cases”  |
| <b>Date Delivered:</b>     | 15 January 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicants contracted, in 1991 and 1992, to buy apartments from the JNA. The contracts were retroactively nullified by legislation passed in December 1995. In some of the cases civil proceedings relating to the registration of the applicant's ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complained that the nullification of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention. They further complained that the compulsory adjournment of the court proceedings had or would have violated their right of access to a court, as guaranteed by Article 6 of the Convention.

### **Admissibility**

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### **Merits**

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

Reaffirming its decisions in *Medan* and *Podvorac*, the Chamber found that, at the time the December 1995 legislation came into force, the applicants had rights under their purchase contracts which constituted “possessions” for the purposes of Article 1 of Protocol No. 1. The effect of the Decree was to annul those rights and the applicants were therefore deprived of their possessions. In considering whether the deprivations were justified the Chamber found no material distinction between these 27 cases and *Medan* and *Podvorac*. Moreover, new legislation issued after the Chamber's decision in *Medan* had not changed the applicants' situation. Accordingly, the Chamber found that these applicants had been made to bear an “individual and excessive burden” and that there had been a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in *Medan* and *Podvorac*, that the court proceedings in question either were or would have been adjourned shortly after the February 1995 Decree entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants' right of access to court within a reasonable time for the purpose of having their civil claims determined (i.e. recognition of their ownership and registration in the Land Registry). Thus there had been a violation of Article 6.

## Remedies

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1 to the Convention, but that the matters with which the legislation deals are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts; to take all necessary steps to lift the compulsory adjournment of court proceedings aiming at formal recognition of the applicants' property right; and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time. The Chamber ordered the Federation to pay compensation to three of the applicants. The other applicants did not file compensation claims.

*Decision adopted 11 January 1999*

*Decision delivered 15 January 1999*

## DECISION ON REQUEST FOR REVIEW

The Federation submitted a request for review in which it argued that the First Panel had lacked quorum to adjudicate the cases in question, as it did not sit with all seven members; that the Chamber lacked competence *ratione temporis* to examine the cases; that its acts resulted from its obligations under the CERD to ensure equal treatment of all occupants of socially-owned apartments; and that the Chamber had failed to consider that prior to the conclusion of some of the applicants' purchase contracts such contracts had been prohibited by legal provisions which had never been declared unconstitutional. The Chamber referred to *Medan* and found that the request raised neither a serious question affecting the interpretation or application of the Human Rights Agreement nor a serious issue of general importance. Thus the Chamber found that the request did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted 15 May 1999*

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| <b>Cases Nos.:</b>         | CH/97/82 et al.   |
| <b>Applicants:</b>         | Velimir OSTOJIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “32 JNA Cases”  |
| <b>Date Delivered:</b>     | 15 January 1999   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants contracted, in 1991 and 1992, to buy apartments from the JNA. The contracts were retroactively nullified by a December 1995 Decree. In some of the cases civil proceedings relating to the registration of the applicants' ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complained that the nullification of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention. They further complained that the compulsory adjournment of the court proceedings had or would have violated their right of access to a court, as guaranteed by Article 6 of the Convention.

### Admissibility

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### Merits

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

Reaffirming its decisions in *Medan* and *Podvorac*, the Chamber found that, at the time the December 1995 Decree came into force, the applicants had rights under their purchase contracts which constituted “possessions” for the purposes of Article 1 of Protocol No. 1. The effect of the Decree was to annul those rights and the applicants were therefore deprived of their possessions. In considering whether the deprivations were justified the Chamber found no material distinction between these 32 cases and *Medan* and *Podvorac*. Moreover, new legislation issued after the Chamber's decision in *Medan* had not changed the applicants' situation. Accordingly, the Chamber found that these applicants had been made to bear an “individual and excessive burden” and that there had been a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in *Medan* and *Podvorac*, that the court proceedings in question either were or would have been adjourned shortly after the February 1995 Decree entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants' right of access to court within a reasonable time for the purpose of having their civil claims determined (i.e. recognition of their ownership and registration in the Land Registry). Thus there had been a violation of Article 6.

## Remedies

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1 to the Convention, but that the matters with which the legislation deals with are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts; to take all necessary steps to lift the compulsory adjournment of court proceedings aiming at formal recognition of the applicants' property rights; and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time. The Chamber ordered the Federation to pay compensation to eight of the applicants. The other applicants did not file compensation claims.

## Dissenting Opinion

Mr. Manfred Nowak attached a partly dissenting opinion in which he disagreed with the way in which the Chamber awarded compensation. He argued that the amount of compensation should not be limited by the respective claims of the applicants but should be proportionate to the gravity of the violations found and the resulting damage. He felt that the awards were arbitrary and not proportionate to the gravity of the violations found, and that the Chamber should either have refrained from awarding any compensation or awarded a more substantial amount of compensation to all applicants proportionate to the gravity of the violations.

*Decision adopted 13 January 1999*

*Decision delivered 15 January 1999*

## DECISION ON REQUEST FOR REVIEW

The Federation submitted a request for review. As for the Federation's argument that the Chamber lacked competence *ratione temporis* to examine the cases, the Chamber considered that insofar as the applicants complained of the continuing adjournment of their court cases after 14 December 1995, the continuing absence of an effective remedy after that date and the alleged retroactive annulment of their contracts by a law passed after 14 December 1995, their complaints were within the Chamber's competence *ratione temporis*. As for the Federation's argument that its acts resulted from its obligations under CERD to ensure equal treatment of all occupants of socially-owned apartments, the Chamber found no "serious question affecting the interpretation or application of the Agreement or a serious issue of general importance." As for the Federation's argument that the Second Panel failed to consider that prior to the conclusion of some of the applicants' purchase contracts such contracts had been prohibited by legal provisions which had never been declared unconstitutional, the Chamber referred to *Medan* and again found no "serious question affecting the interpretation or application of the Agreement or a serious issue of general importance." Thus the Chamber found that the request did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted 15 May 1999*

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| <b>Case No.:</b>         | CH/97/93                             |
| <b>Applicant:</b>        | Mirjana MATIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 June 1999                         |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is an occupancy right holder over an apartment in Sarajevo. In April 1992 the applicant and her children left Sarajevo. While the apartment was vacant, it was occupied by soldiers of the Army of the then Republic of Bosnia and Herzegovina. In March 1995 the apartment was declared abandoned pursuant to the old Abandoned Apartments Law and allocated to B.H. In May 1995 the applicant initiated civil proceedings against B.H., seeking to regain movable property in the apartment. In November 1997, the applicant petitioned the CRPC, and her claim remained pending. In August 1998 the applicant received a decision under the new Abandoned Apartments Law, confirming her occupancy right and entitling her to repossess the apartment. This decision was later annulled and further proceedings remained pending.

### Admissibility

Noting that the applicant's apartment was declared temporarily abandoned prior to 14 December 1995, the Chamber observed, however, that the applicant's grievance related to a situation which continued up to date. The Chamber therefore found that it was competent *ratione temporis* to examine the case insofar as the situation continued past 14 December 1995. Noting also that the applicant raised several complaints essentially different from the subject matter which she brought before the CRPC and which fell outside the CRPC's competence, the Chamber found that the applicant's pending claim before the CRPC did not preclude the Chamber from examining her case. Satisfied that the domestic remedies the applicant attempted to use could not be considered effective in practice and that the applicant should not be required to exhaust any further domestic remedy, the Chamber declared the application admissible.

### Merits

#### *Article 8 of the Convention*

The Chamber referred to its case law in *Onić*, establishing that an applicant's links to his/her pre-war apartment were sufficient for that apartment to be considered his/her "home" for the purposes of Article 8 paragraph 1 of the Convention. The Chamber recalled its finding in *Onić* that the provisions of the old Abandoned Apartments Law, as applied also in the present case, failed to meet the standards of a "law" for the purposes of Article 8. Accordingly, this provision had been violated by virtue of the authorities' effective refusal, by application of the old Abandoned Apartments Law, to allow the applicant to return to her apartment. The Chamber also found that there was an ongoing violation of Article 8 due to the authorities' failure to comply with the procedure laid down by the new Abandoned Apartments Law and other domestic law with respect to the examination of the applicant's claim for repossession and the non-execution of the decision entitling her to return to that dwelling.

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

The Chamber reaffirmed that an occupancy right can be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1. The Chamber concluded that there had also been a violation of this provision given the refusal under the old Abandoned Apartments Law to allow the applicant to return to her apartment. The violation had continued with the authorities' failure to comply with the

new Abandoned Apartments Law and other domestic law with respect to the examination of her claim for repossession.

*Article 6 of the Convention*

The Chamber noted that the court proceedings that the applicant initiated for the purpose of regaining her movable property had been pending since 1995. The Chamber found that the proceedings had lasted beyond a reasonable time and thus that there had been a violation of Article 6.

**Remedies**

The Chamber ordered the Federation to process the applicant's repossession claim without further delay and to take all necessary steps to enable the applicant, whose occupancy right had been confirmed by an enforceable decision under the new Abandoned Apartments Law, to return swiftly to her apartment.

*Decision adopted 14 May 1999*

*Decision delivered 11 June 1999*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/97/104 et al.  |
| <b>Applicants:</b>         | Brankica TODORVIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 11 October 2002   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicants are citizens of Bosnia and Herzegovina. Before the dissolution of the Socialist Federal Republic of Yugoslavia, they deposited foreign currency with commercial banks in that country. Because of a growing shortage of such currency and other economic problems, the withdrawal of money from these "old" foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s.

Following the war in Bosnia and Herzegovina, the applicants' requests to withdraw money from their foreign currency savings accounts were all rejected, either without stated reasons or with reference to legislation enacted by the SFRY, the Republic of Bosnia and Herzegovina, or the Federation of Bosnia and Herzegovina. Some of the applicants initiated court proceedings to obtain access to their foreign currency savings, but these actions have all been unsuccessful so far. Although one applicant did obtain a judgement in his favour, he was subsequently informed by the Minister of Finance of the Federation of Bosnia and Herzegovina that the judgement could not be enforced.

According to legislation enacted by the Federation of Bosnia and Herzegovina in 1997 and 1998, in particular the Law on Determination and Settlement of Citizen's Claims in the privatisation Process, claims based on the old foreign currency savings accounts were to be resolved in the process of privatisation of socially and publicly owned property. Under this law, the Federation issued certificates that could be used in the privatisation process to purchase apartments, municipal business premises, shares of enterprises, or other assets. This procedure was designed to settle citizen's claims in a way that would protect the public debt payment system and the banking system from collapse.

On 9 June 2000, in case no. CH/97/48 et al., Poropat and Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, involving similarly situated applicants, the Chamber previously decided that, with regard to frozen foreign currency savings accounts, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina had violated the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights. The Chamber ordered, among other remedies, that the Federation of Bosnia and Herzegovina should "amend the privatisation programme so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency savings accounts."

Between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to comply with the Chamber's order in Poropat and Others. On 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law -provisions essential to the scheme of conversion of old foreign currency savings into certificates -were not in accordance with the Constitution of Bosnia and Herzegovina.

The applicants complained that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights, and their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention, had been violated.

### **Admissibility**

The Chamber held that the applications were admissible against Bosnia and Herzegovina insofar as they related to Article of Protocol No. 1 to the Convention, but declared the complaints as directed against Bosnia and Herzegovina concerning the lack of access to the courts as guaranteed by Article 6 of the Convention inadmissible *ratione personae*. The Chamber held that it was competent *ratione personae* to consider the applications against the Federation in their entirety.

Having regard to the attempts by the applicants to achieve redress through the court system, the Chamber considered that there were no effective remedies available that the applicants should be required to exhaust. Additionally, the failure of Ms. Mulalić-Papo, Ms. Ilić, and Mr. Janković to initiate proceedings, and the withdrawal by Ms. Hodžić of her action, do not preclude the Chamber from examining their applications.

The respondent Parties raised the objection *res judicata* as the claims were substantially the same as a matter which had already been examined by the Chamber. The Chamber concluded that its decision in *Poropat and Others* did not involve any of the present applicants; thus, the principle of *res judicata* could not attach to it. Additionally, the Chamber considered that the current state of the law affecting old foreign currency savings, following the decision of the Federation Constitutional Court, raised new issues that have neither been considered nor resolved by the Chamber.

Finally, the Chamber considered whether the application in respect of Mr. Višnjevac was inadmissible under the six-month rule. The Chamber concluded that as the alleged violation consists of a continuing situation, the six-month limit can have no application until the situation comes to an end, which it has not.

### **Merits**

The Chamber recognized the Federation of Bosnia and Herzegovina's amendments to the relevant laws in an effort to comply with the Chamber's earlier decision in *Poropat and Others*. However, due to the 8 January 2001 decision of the Federation Constitutional Court declaring some of these laws unconstitutional, the continued application of the laws, the lack of a legislative response, and the apparent unavailability of relief in the domestic courts, the Chamber found a state of legal uncertainty causing an ongoing interference with the applicants' property rights. While noting that the Federation's legislative measures had been pursued in accordance with the general interest, the Chamber found no justification for the respondent Parties' failure to address the prevailing legal uncertainty and the resulting interference with the applicants' property rights. The current situation places a disproportionate burden on individual account holders, and the Federation of Bosnia and Herzegovina has therefore violated the applicants' rights guaranteed by Article 1 of Protocol No. 1 to the Convention. Because of its general responsibility for issues related to old foreign currency savings, the Chamber also found a violation of Article 1 of Protocol No. 1 to the Convention by Bosnia and Herzegovina.

The Chamber also found a violation of Article 6 of the Convention by the Federation of Bosnia and Herzegovina because of the *de facto* denial of access to court to the applicants. In the case of Milenko Višnjevac, the Chamber found a specific violation of Article 6 of the Convention for the Federation's failure to enforce the applicant's valid court judgment.

### **Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to remove the prevailing legal uncertainty surrounding old foreign currency savings accounts by enacting, within six months from the date of delivery of its decision, relevant and binding laws or regulations that clearly address this problem in a manner compatible with Article 1 of Protocol No. 1 to the Convention, as interpreted in the Chamber's decision in *Poropat and Others* and the present decision. The actual method of resolving the situation and eliminating the prevailing legal uncertainty shall be determined by the

Federation. The Chamber also reserved the right to order additional remedies in these cases six months after the date of its decision.

*Decision adopted 7 October 2002*

*Decision delivered 11 October 2002*

Editors note: A decision on “further remedies” was issued in this case by the Chamber on 4 July 2003

**Case No.:** CH/97/110

**Applicant:** Munib MEMIĆ

**Respondent Parties:** Bosnia and Herzegovina and Federation of Bosnia and Herzegovina

**Date Delivered:** 11 February 2000

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina and former member of the JNA, was the occupancy right holder over an apartment in Sarajevo. On 21 February 1992 he entered into contract to buy the apartment from JNA. The applicant left Sarajevo during the war, and shortly after his return in 1997 he discovered the apartment had been declared abandoned and given to another occupant under the old Abandoned Apartments Law. In an effort to regain possession of the apartment, the applicant initiated proceedings, all to no avail, involving organs associated with the army of the Federation; before the Municipal and Cantonal Courts of Sarajevo; and at the Novo Sarajevo Administration for Housing Affairs under the new Abandoned Apartments Law.

### **Admissibility**

The Chamber noted that the courts of the Federation stated that they would not hear the applicant's case until the administrative proceedings had been concluded, but that despite the efforts of the applicant, the Novo Sarajevo Administration for Housing Affairs had failed to make a decision. Referring to *Onić*, the Chamber thus found that the domestic remedies available to the applicant were not effective in practice and declared the application admissible against both respondent Parties.

### **Merits**

#### *Article 8 of the Convention*

As in *Onić* and *Kevešević*, the Chamber found that Article 8 was violated by virtue of the recognition and application of the old Abandoned Apartments Law, by the declaration that the apartment was abandoned, and by the continuing failure of the relevant authority to decide on the applicant's claim to repossess the apartment under the new Abandoned Apartments Law. The Chamber found that the Federation was responsible for this violation.

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

As in *Onić* and *Kevešević*, the Chamber found that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person, done pursuant to the old Abandoned Apartments Law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1. The Chamber found that the Federation was responsible for this violation. Having already found a violation of Article 1 of Protocol No. 1 regarding the applicant's occupancy right, the Chamber concluded that it was not necessary to examine the question of ownership under the purchase contract of 21 February 1992, the validity of which was disputed by the Federation.

#### *Article 6 of the Convention*

The Chamber found that the authorities in this case had failed to meet their responsibility to ensure that the proceedings were expedited in a reasonable time. The authorities had not acted in accord with the Federation's own laws and procedures in an effort to decide these proceedings and had

offered no explanation for the delays. The Chamber found that the conduct of the authorities was the main cause of the delays in the various proceedings. Noting that a speedy outcome of the dispute would have been of particular importance to the applicant, given that the question concerned his home and property, the Chamber found that Article 6 paragraph 1 was violated in that the proceedings in the applicant's case were not determined within a reasonable time. The Chamber found that the Federation was responsible for this violation.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to swiftly reinstate the applicant into his apartment and to pay the applicant, by way of non-pecuniary compensation for mental suffering, KM 1,200. Having found no violation for which the State was responsible, the Chamber did not order the State to take any action.

*Decision adopted 8 February 2000*

*Decision delivered 11 February 2000*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/97/114                            |
| <b>Applicant:</b>        | Fatima RAMIĆ                         |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 7 September 2001                     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is the occupancy right holder of an apartment in Sarajevo, which she temporarily left in the late 1980s because her son needed medical treatment in Croatia. The applicant's daughter continued to stay in the apartment and the applicant visited the apartment from time to time. On 20 May 1992 the applicant's daughter left the apartment due to the hostilities. The case concerns the applicant's attempts to regain possession of her apartment. She tried to repossess her apartment through competent local administrative bodies and the CRPC. In 1998 CRPC issued a decision confirming the applicant's status as the occupancy right holder of the apartment and finding that the applicant was entitled to regain possession. In January 2000, however, the local administrative body issued a decision stating that the applicant had left the apartment in 1989 and thus that the conditions of the Law on Amendments to the new Abandoned Apartments Law had not been met.

### **Admissibility**

Noting that the applicant had made repeated unsuccessful attempts to remedy her situation, and that use of relevant domestic laws, even if successful, would not remedy the applicant's complaints related to the failure of the authorities to issue and enforce decisions within the time-limit prescribed by law, the Chamber found that the applicant could not be required to pursue any further remedy provided by domestic law. Regarding her claim of discrimination, the Chamber noted that the applicant had not submitted any evidence to support her allegations and found that this part of the application was manifestly ill-founded. Thus the Chamber declared the application admissible in respect of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, and inadmissible in respect of the applicant's claim of discrimination.

### **Merits**

#### *Article 8 of the Convention*

The Chamber first noted that the applicant's apartment was her "home" for the purposes of Article 8. By declaring the apartment abandoned and by failing to deal effectively, in accordance with Federation law, with the applicant's requests for repossession and her request for enforcement of the decision of the CRPC, the Federation prevented the applicant from regaining possession of her apartment. This was an ongoing interference with the applicant's right to respect for her home. Any decision of a domestic authority that is given after a CRPC decision and is incompatible with it is unlawful unless it falls within the narrowly defined category of cases for which deviation from a CRPC decision is possible under the law. As this exception did not apply here, the interference was not "in accordance with the law." Thus the Chamber found a violation of the right of the applicant to respect for her home as guaranteed by Article 8.

#### *Article 1 of Protocol No. 1 of the Convention*

The Chamber considered that the applicant's right in respect of the apartment was a "possession" within the meaning of Article 1 of Protocol No. 1. By declaring the apartment abandoned and failing to allow the applicant to regain possession of her apartment in a timely manner, the Federation interfered with her right to peaceful enjoyment of that possession. For the same reasons as given in

its examination of the case under Article 8 of the Convention, the Chamber found that this interference was not subject to conditions provided by law, and thus that there was a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the respondent Party to reinstate the applicant into her apartment without further delay. The Chamber also ordered the respondent Party to pay to the applicant KM 2,000 in respect of non-pecuniary damage; KM 7,800 for the loss of use of the apartment and moveable property therein during the time the applicant was forced to live in alternative accommodation; and KM 200 for each further month that she continued to be forced to live in alternative accommodation as from 1 October 2001 until the end of the month in which she was reinstated.

*Decision adopted 4 September 2001*

*Decision delivered 7 September 2001*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/98/124 et al.  |
| <b>Applicants:</b>         | Ivan LAUS et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “7 JNA Cases”   |
| <b>Date Delivered:</b>     | 11 June 1999  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

In 1992 the applicants contracted to buy apartments from the JNA. The contracts were annulled by legislation passed in December 1995. In some of the cases civil proceedings relating to the registration of the applicant's ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complained, in particular, that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### **Admissibility**

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### **Merits**

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

Reaffirming its previous case-law, the Chamber found that at the time the December 1995 legislation came into force, the applicants had rights under their purchase contracts which were “possessions” for purposes of Article 1 of Protocol No. 1. The effect of the legislation was to annul those rights and to deprive the applicants of their possessions. In respect of this interference, the applicants had been made to bear an “individual and excessive burden.” Thus there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in previous JNA cases, that the court proceedings relating to registering ownership of the apartments either were or would have been adjourned shortly after the February 1995 Decree entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants' right of access to court within a reasonable time for the purpose of having their civil claims determined. Thus there had been a violation of Article 6.

### **Remedies**

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1 to the Convention, but that the matters with which the legislation deals are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take all necessary steps to render ineffective the annulment of the contracts; lift the compulsory adjournment of court proceedings aiming at recognition of the

applicants' property rights; and secure their right of access to court and a hearing within a reasonable time. The Chamber ordered the Federation to pay compensation to those of the applicants who had filed compensation claims.

*Decision adopted 14 April 1999*

*Decision delivered 11 June 1999*

#### **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review. The Chamber noted that all of the Federation's arguments had repeatedly been raised in previous JNA cases and had all been rejected by the Chamber. The Chamber found that the request raised neither a serious question affecting the interpretation or application of the Human Rights Agreement nor a serious issue of general importance. Therefore, as the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 8 October 1999*

|                            |   |
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| <b>Cases Nos.:</b>         | CH/98/126 et al.  |
| <b>Applicants:</b>         | Ljubiša MARIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “8 JNA Cases”   |
| <b>Date Delivered:</b>     | 10 March 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

In 1992 the applicants contracted to buy apartments from the JNA. The contracts were annulled by legislation passed in December 1995. In some of the cases civil proceedings relating to the registration of the applicant's ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complain that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention and also allege violations of Articles 6 and 13 of the Convention.

### **Admissibility**

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### **Merits**

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

The Chamber found that the applicants had rights under their contracts, which were “possessions” for the purposes of Article 1 of Protocol No. 1. The effect of the December 1995 legislation was to annul those rights, depriving each applicant of his possessions. The Chamber rejected the argument of the Federation that the annulment was “in the public interest” because the original sales discriminated against those citizens not eligible to purchase JNA apartments. Therefore, the Chamber found that the applicants were made to bear an “individual and excessive burden” and that there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

One of the applicant's court proceedings had been adjourned since shortly after the February 1995 Decree came into force and continued to be adjourned since the Dayton Peace Agreement came into force. As in Medan and others, the Chamber noted that court proceedings for registration of ownership either were or would have been adjourned by virtue of the Decree in question. Therefore, the Chamber found a continuing interference with the applicants' right of access to court for the purpose of having their civil claims determined as guaranteed by Article 6. The Chamber also found that the duration of the proceedings had been prolonged beyond a “reasonable time.” Thus the Chamber found a violation of Article 6, even for those applicants who had not instituted court proceedings.

## **Remedies**

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1, but that the matters with which the legislation deals with are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicants' contracts; to lift the compulsory adjournment of the court proceedings instituted by one of the applicants; and to take all necessary steps to secure the right of all applicants to access to court. The Chamber ordered the Federation to pay compensation for legal costs and expenses to those of the applicants who had filed compensation claims.

## **Dissenting Opinion**

Mr. Manfred Nowak attached a partly dissenting opinion in which he disputed the Chamber's compensation awards for the same reasons as those indicated in his partly dissenting opinion in *Ostojić et al. (CH/97/82 et al.)*.

*Decision adopted 8 March 1999*

*Decision delivered 10 March 1999*

## **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review. The Chamber noted that all of the Federation's arguments had repeatedly been raised in previous JNA cases and had all been rejected by the Chamber. The Chamber found that the request raised neither a serious question affecting the interpretation or application of the Human Rights Agreement nor a serious issue of general importance. Therefore, as the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 9 July 1999*

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| <b>Cases Nos.:</b>         | CH/98/129 et al.  |
| <b>Applicants:</b>         | Matija IVKOVIĆ et al.   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “7 JNA Cases”   |
| <b>Date Delivered:</b>     | 10 March 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

In 1992 the applicants contracted to buy apartments from the JNA. The contracts were annulled by legislation passed in December 1995. In some of the cases civil proceedings relating to the registration of the applicant's ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complained that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### **Admissibility**

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention, and declared the cases admissible. Given the ongoing nature of the alleged violations, the Chamber found that it was competent *ratione temporis* to examine the present cases. The Chamber thus declared all the applications admissible.

### **Merits**

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

The Chamber found that the applicants had rights under their contracts which were “possessions” for the purposes of Article 1 of Protocol No. 1. The effect of the December 1995 legislation was to annul those rights, depriving each applicant of his possessions. The Chamber rejected the argument of the Federation that the annulment was “in the public interest” because the original sales discriminated against those citizens not eligible to purchase JNA apartments. The Chamber found that the applicants were made to bear an “individual and excessive burden,” and that there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in previous JNA cases, that the court proceedings relating to registering ownership of the apartments either were or would have been adjourned shortly after the February 1995 Decree entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants' right of access to court within a reasonable time for the purpose of having their civil claims determined. Thus there had been a violation of Article 6.

### **Remedies**

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1 to the Convention, but that the matters with which the legislation deals are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take all necessary steps to render ineffective the annulment of the

contracts; lift the compulsory adjournment of court proceedings aiming at recognition of the applicants' property rights; and secure their right of access to court and a hearing within a reasonable time. The Chamber ordered the Federation to pay compensation to those of the applicants who filed compensation claims.

*Decision adopted 8 February 1999*

*Decision delivered 10 March 1999*

#### **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review. The Chamber noted that all of the Federation's arguments had repeatedly been raised in previous JNA cases and had all been rejected by the Chamber. The Chamber found that the request raised neither a serious question affecting the interpretation or application of the Human Rights Agreement nor a serious issue of general importance. Therefore, as the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 9 July 1999*

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/98/159 et al.  |
| <b>Applicants:</b>         | Akif HUSELJIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “5 JNA Cases”   |
| <b>Date Delivered:</b>     | 11 June 1999  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

In 1992 the applicants contracted to buy apartments from the JNA. The contracts were annulled by legislation passed in December 1995. In some of the cases civil proceedings relating to the registration of the applicant's ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complain that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention and also allege violations of Articles 6 and 13 of the Convention.

### Admissibility

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### Merits

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

Reaffirming its previous case-law, the Chamber found that at the time the December 1995 legislation came into force, the applicants had rights under their purchase contracts which were “possessions” for purposes of Article 1 of Protocol No. 1. The effect of the legislation was to annul those rights and to deprive the applicants of their possessions. In respect of this interference, the applicants had been made to bear an “individual and excessive burden.” Thus there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in previous JNA cases, that the court proceedings relating to registering ownership of the apartments either were or would have been adjourned shortly after the February 1995 Decree entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants' right of access to court within a reasonable time for the purpose of having their civil claims determined. Thus there had been a violation of Article 6.

### Remedies

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1 to the Convention, but that the matters with which the legislation deals with are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take the necessary legislative or administrative action to render

ineffective the annulment of the applicants' contracts; to lift the compulsory adjournment of the court proceedings instituted by one of the applicants; and to take all necessary steps to secure the right of all applicants to access to court. The Chamber ordered the Federation to pay compensation for legal costs and expenses to those of the applicants who filed compensation claims.

### **Concurring Opinion**

Mr. Dietrich Rauschnig attached a concurring opinion in which he discussed what he found to be the more compelling reasons for reaching the Chamber's conclusions.

*Decision adopted 14 April 1999*

*Decision delivered 11 June 1999*

### **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review. The Chamber noted that all of the Federation's arguments had repeatedly been raised in previous JNA cases and had all been rejected by the Chamber. The Chamber found that the request raised neither a serious question affecting the interpretation or application of the Human Rights Agreement nor a serious issue of general importance. Therefore, as the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 9 September 1999*

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/98/174 et al.  |
| <b>Applicants:</b>         | Ivan VIDOVIĆ et al.   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “5 JNA Cases”   |
| <b>Date Delivered:</b>     | 14 May 1999   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

In 1992 the applicants contracted to buy apartments from the JNA. The contracts were annulled by legislation passed in December 1995. In one of the cases civil proceedings relating to the registration of the applicant's ownership remained adjourned by virtue of a Decree issued in February 1995. The applicants complained that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### Admissibility

As for the Federation's argument that the cases fell within the jurisdiction of the Constitutional Court and thus were incompatible with the Human Rights Agreement, the Chamber recalled that it was competent to consider both “alleged and apparent violations of human rights” guaranteed by the Convention. Finding that the Chamber was competent *ratione temporis* to examine the present cases and that none of the applicants had any effective domestic remedies available to them, the Chamber declared the applications admissible.

### Merits

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

The Chamber found that the applicants had rights under their contracts, which were “possessions” for the purposes of Article 1 of Protocol No. 1. The effect of the December 1995 legislation was to annul those rights, depriving each applicant of his possessions. The Chamber rejected the argument of the Federation that the annulment was “in the public interest” because the original sales discriminated against those citizens not eligible to purchase JNA apartments. Therefore, the Chamber found that the applicants were made to bear an “individual and excessive burden” and that there was a violation of Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

The Chamber noted, as in previous JNA cases, that the court proceedings relating to registering ownership of the apartments either were or would have been adjourned shortly after the February 1995 Decree entered into force. As this situation had apparently not changed, there had been a continuing deprivation of the applicants' right of access to court within a reasonable time for the purpose of having their civil claims determined. Thus there had been a violation of Article 6.

### Remedies

The Chamber noted that the State is responsible for having passed the legislation that resulted in the violation of Article 1 of Protocol No. 1 to the Convention, but that the matters with which the legislation deals with are now within the responsibility of the Federation, which recognises and applies this legislation. Accordingly, the Chamber did not order the State to take any action. The Chamber ordered the Federation to take the necessary legislative or administrative action to render

ineffective the annulment of the applicants' contracts; to lift the compulsory adjournment of the court proceedings instituted by one of the applicants; and to take all necessary steps to secure the right of all applicants to access to court. The Chamber ordered the Federation to pay compensation for legal costs and expenses to those of the applicants who filed compensation claims.

*Decision adopted 13 March 1999*

*Decision delivered 14 May 1999*

#### **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review. The Chamber noted that all of the Federation's arguments had repeatedly been raised in previous JNA cases and had all been rejected by the Chamber. The Chamber found that the request raised neither a serious question affecting the interpretation or application of the Human Rights Agreement nor a serious issue of general importance. Therefore, as the request did not meet the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 9 September 1999*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/98/232 and 480   |
| <b>Applicants:</b>         | Milan BANJAC and M.M.   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “2 JNA Pension Cases”   |
| <b>Date Delivered:</b>     | 6 July 2001   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are citizens of Bosnia and Herzegovina living in the territory of the Federation. They are former officers of the JNA who retired before 1992. Until the outbreak of the war in Bosnia and Herzegovina they received their pensions (“JNA Pension”) from the Institute for Social Insurance of Army Insurees in Belgrade (“JNA Pension Fund”), to which they had paid contributions during their life as active soldiers. In September 1992 the Republic of Bosnia and Herzegovina issued a decree with force of law to the effect that pensioners of the JNA would be paid a pension amounting to 50 percent of their previous pension. This decree was confirmed by a law of the Republic of Bosnia and Herzegovina passed in June 1994 and by the Law on Pensions and Disability Insurance of the Federation, which entered into force on 31 July 1998. Throughout the decision, the Chamber relied on its findings in *Šećerbegović, Biočić, Oroz* (CH/98/706, 740 and 776).

### Admissibility

The Chamber noted that pensions are not among the matters within the responsibility of the institutions of the State listed in the Constitution of Bosnia and Herzegovina and that State institutions did not take any action in this matter. The Chamber also noted that until the entry into force of the Law on Pensions and Disability Insurance of the Federation, the payment of an amount equivalent to 50 percent of the original JNA pensions was due to legislation enacted by the Republic of Bosnia and Herzegovina prior to the entry into force of the Dayton Peace Agreement. The Chamber concluded that no responsibility could attach to the State and declared the applications inadmissible as it had no competence *ratione personae* to continue to consider them insofar as they were directed against the State.

The Chamber declared the applications admissible insofar as they were directed against the Federation and related to whether the applicants had a protected interest within the meaning of Article 1 of Protocol No. 1 to the Convention to full pension payments, and whether the applicants had suffered discrimination in the payment of their pensions. Insofar as the applicants claimed that their pension payments were not increased in accordance with general increases of salaries and pensions in the Federation, the Chamber noted that there is no such right protected under the Convention and declared such claims inadmissible as manifestly ill-founded. The Chamber found that the applicants’ claims with respect to discrimination in the increase of their pension payments were inadmissible as manifestly ill-founded because the applicants did not substantiate them.

### Merits

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

The Chamber noted that the European Court and Commission of Human Rights have considered that although the Convention does not guarantee a right to a specific social welfare benefit, the right to a pension can, under certain circumstances, amount to a possession protected by Article 1 of Protocol No. 1. It also noted, however, that the applicants had not paid any contributions to the Pension Fund of Bosnia and Herzegovina, and that they had no legal relationship to that fund before the enactment of the decree issued in September 1992. The Chamber therefore concluded that the applicants had no claim to receive the full JNA pensions which could be regarded as a possession under Article 1 of

Protocol No. 1.

*Discrimination*

The Chamber considered possible discrimination in the enjoyment of the right to social security protected by Article 9 of the ICESCR. The Chamber first considered whether the applicants were treated differently from their former colleagues living in the Republika Srpska and in the Federal Republic of Yugoslavia, who still received their full JNA pensions. Finding that the pension treatment which former JNA members receive in the Republika Srpska and in the Federal Republic of Yugoslavia is outside the responsibility of the Federation, and that the applicants' claim towards the JNA Pension Fund in Belgrade, from which the JNA pensioners living in the Republika Srpska and in the Federal Republic of Yugoslavia receive their pension payments, remained untouched by the legislation enacted by the Republic of Bosnia and Herzegovina and by the Federation, the Chamber concluded that the applicants' complaint of discrimination was ill-founded.

The Chamber next considered whether JNA pensioners were treated differently from the civilian pensioners of the Pension Fund of Bosnia and Herzegovina. Finding that the civilian pensioners were not in a relevantly similar position to the JNA pensioners, the Chamber concluded that no issue of differential treatment of the applicants, and therefore no issue of discrimination in the enjoyment of the right to social security, arose in relation to the civilian pensioners. Finally, the Chamber considered whether JNA pensioners were treated differently from the military pensioners of the Pension Fund of Bosnia and Herzegovina who served in the JNA before joining the Army of Bosnia and Herzegovina or the Army of the Federation. The Chamber noted that these persons received credit for the time served in the JNA for the purpose of their pension treatment. It also noted that the average pension of this group was considerably higher than the average payment received by the JNA pensioners and the average pension of the civilian pensioners. The Chamber found that the difference in treatment between the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation and the JNA pensioners was justifiable, considering that the former had served in the armed forces of the country whose pension fund paid their pensions. Thus the Chamber found no discrimination in the enjoyment of the right to social security under Article 9 of the ICESCR.

*Decision adopted 5 June 2001*

*Decision delivered 6 July 2001*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/271        |
| <b>Applicant:</b>        | Meliha FILIPOVIĆ |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 10 December 1999 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina, resident in Banja Luka. On 23 January 1995 she rented her apartment to the occupant Mr. L.N. Since the occupant was not complying with his contractual obligations she tried to terminate the contract. On 15 March 1996 the applicant initiated proceedings before the Municipal Court in Banja Luka, requesting termination of the contract. At the time of the Chamber's consideration, her request remained pending. In June 1998 the Commission for Accommodation of Refugees and Administration of Abandoned Property issued a decision allocating the apartment to the occupant. The decision was quashed by a judgment of the Supreme Court of the Republika Srpska, and the case was sent back to the Commission for Accommodation of Refugees and Administration of Abandoned Property for consideration, which allocated again the apartment to the occupant. The applicant appealed to the Ministry for Refugees and Displaced Persons and at the time of the Chamber's consideration, the case remained pending.

### **Admissibility**

As to the alleged violation of the applicant's property rights, the Chamber noted that the applicant had the right to request the return of her apartment into her possession at any time. The Chamber noted that the applicant had not filed such a request and had not sought to demonstrate that such a request would be ineffective. Thus the Chamber declared this part of the application inadmissible, as the applicant had not demonstrated that the effective domestic remedies had been exhausted. As to the alleged violation of Article 6 of the Convention, the Chamber noted that the respondent Party had not put forward any objection to the admissibility of the case and that this part of the case did not appear to be *prima facie* inadmissible, and declared this part of the application admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber recalled that the factors to be taken into account in determining whether the length of civil proceedings has been reasonable are the complexity of the case, the conduct of the applicant and the conduct of the national authorities. Here, the Chamber found that the case was not complex, no conduct on the part of the applicant could be considered as causing a delay in the proceedings, and the respondent Party was responsible for the delay. Thus the Chamber considered that the applicant's right to a "hearing within a reasonable time" as provided for by Article 6 paragraph 1 was violated.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to ensure that the applicant's proceedings before the Ministry for Refugees and Displaced Persons were decided upon within the time-limits as specified by law and in accordance with the applicant's rights as guaranteed by the Human Rights Agreement, and to pay to the applicant KM 500 by way of compensation for mental suffering.

*Decision adopted 3 November 1999*

*Decision delivered 10 December 1999*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/367        |
| <b>Applicant:</b>        | Ilija JANKOVIĆ   |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 12 May 2000      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina. His application concerned his attempts to purchase an apartment from the former JNA over which he held an occupancy right. He was unable to enter into a contract with the appropriate authorities as there was a dispute as to the purchase price. On 24 June 1997 the applicant initiated court proceedings before the Court of First Instance in Banja Luka seeking that he be enabled to enter into a contract for the purchase of the apartment. At the time of the Chamber's consideration, these proceedings remained pending.

### **Admissibility**

Noting that there was no ordinary remedy available to the applicant in the legal system of the Republika Srpska against the failure of the court to decide on his proceedings, the Chamber did not consider that there was any effective remedy available to the applicant which he should be required to exhaust, and declared the case admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber referred to *Čuturić* (CH/98/1171) and the three factors to be considered under Article 6: the complexity of the case, the conduct of the applicant and the conduct of the national authorities. The Chamber found that this case did not appear to be a complex one; that there did not appear to be any conduct on the part of the applicant which could be considered to be responsible for the delay in the proceedings; and that the main apparent reason for the failure to decide on the case was the failure of the defendants to appear at the hearings. The Chamber therefore found that the length of time that the applicant's proceedings had been pending before the court was unreasonable, that this was as a result of the conduct of the Republika Srpska and its organs, and that the applicant's right to a fair trial within a reasonable time as guaranteed by Article 6 had been violated.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to ensure that the applicant's proceedings were completed within a reasonable time.

*Decision adopted 4 April 2000*

*Decision delivered 12 May 2000*

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| <b>Case No.:</b>         | CH/98/394                            |
| <b>Applicant:</b>        | Ivo JURIĆ                            |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 10 December 1999                     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant lived until March 1993 in an apartment in Tuzla over which he held an occupancy right. In March 1993 he left his apartment for a business trip abroad from which he did not return within the month allotted in his travel permission. In November 1993 his apartment was temporarily allocated to the D. family. It was declared abandoned under the old Abandoned Apartments Law. At the end of the hostilities, the applicant initiated proceedings before the competent administrative and judicial authorities to regain possession of his apartment. After about two years of proceedings and several negative decisions, the applicant's occupancy right and the right to repossess his apartment was eventually confirmed on 4 July 1998 by a decision under the new Abandoned Apartments Law. However, this decision was not enforced.

### **Admissibility**

Noting that the applicant initiated proceedings under the new Abandoned Apartments Law with a view to being reinstated into his apartment, the Chamber was satisfied that the applicant could not be required to exhaust any further remedy provided by domestic law, and declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

As in *Kevešević*, the Chamber found that the provisions of the old Abandoned Apartments Law, as applied also in the present case, failed to meet the standards of a "law" for the purposes of Article 8. Accordingly, the Chamber found that this provision was violated by virtue of the decision to declare the applicant's apartment abandoned. As in *Eraković*, the Chamber further noted that the applicant's claim for repossession had not yet been finally examined in compliance with the time-limits in the new Abandoned Apartments Law. Thus there had been an ongoing violation of the applicant's right to respect for his home under Article 8 insofar as the procedure for examining his repossession claim had not been "in accordance with the law."

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

As in *Kevešević*, the Chamber found that a decision to declare abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Abandoned Apartments Law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law." Accordingly, Article 1 of Protocol No. 1 was violated by virtue of the decision to declare the applicant's apartment abandoned. Given that his claim for repossession had not been finally examined in compliance with the time-limits in the new Abandoned Apartments Law, this procedure had not been "subject to the conditions provided for by law" either. Thus there had been a continuing violation of the applicant's right under Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to enable the applicant to return to

his apartment swiftly.

*Decision adopted 3 November 1999*

*Decision delivered 10 December 1999*

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| <b>Case No.:</b>           | CH/98/457   |
| <b>Applicant:</b>          | Milan ANUŠIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 13 October 2000   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

On 5 September 1991 Mr. Anušić, a citizen of Bosnia and Herzegovina of Serb origin, entered into a contract to purchase an apartment located in Sarajevo from the JNA, over which he held an occupancy right. He left the apartment due to the war. Shortly after the cessation of hostilities the applicant returned to Sarajevo, only to discover that his apartment was being occupied by another individual. The applicant sought to regain possession of his apartment and at the time of the Chamber's consideration had been unsuccessfully pursuing resolution of his case through the judicial and administrative bodies in Sarajevo, including by filing a claim under the new Abandoned Apartments Law, for more than four years.

### **Admissibility**

As it could not see how Bosnia and Herzegovina was responsible for the ongoing situation about which the applicant complained, the Chamber declared the application inadmissible with respect to the State. As the applicant had pursued domestic remedies for more than 4 years without success, the Chamber concluded that they were shown to be ineffective and that the applicant could not be further required to pursue them. Thus the Chamber declared the application admissible against the Federation.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the applicant had been unable to regain possession of the apartment due to the failure of the competent authority of the respondent Party to deal effectively with his claim for repossessing it under the new Abandoned Apartments Law. The competent authority of the respondent Party had violated the new Abandoned Apartments Law by not accepting the claim, by not deciding positively on repossession and by not deciding at all within the time limit of 30 days set out in the new Abandoned Apartments Law. Consequently the interference was not in accordance with the law, the respondent Party being in breach of its obligations under Article 8.

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

Having found that the rights of the applicant under his contract of purchase for the apartment in question constituted "possessions" for the purposes of Article 1 of Protocol No. 1, the Chamber considered that the refusal to recognise the right of the applicant to be registered as the owner of the apartment amounted to an interference with his right to peaceful enjoyment of his possessions. The Chamber noted that the Law on Sale of Apartments with an Occupancy Right prescribes that the Federation Ministry of Defence must 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 Abandoned Apartments Law, and that the applicant had exercised his right under the new Abandoned Apartments Law. Therefore, the Federation Ministry of Defence was responsible for the applicant's inability to be registered as the owner, and these actions had not been in accordance with conditions provided for by law. Thus the Chamber found that the actions of the Federation Ministry of Defence Sarajevo had led to the applicant's continuing inability to be registered as the owner of the apartment, and the Federation had violated Article 1 of Protocol No. 1.

*Article 6 of the Convention*

The Chamber concluded that the length of the proceedings which the applicant initiated seeking to regain possession had exceeded a “reasonable time” and therefore that the Federation had violated his rights under Article 6 paragraph 1.

**Remedies**

The Chamber ordered the Federation to reinstate the applicant into possession of his apartment and to register him as its owner. Further, the Chamber ordered the Federation to pay the applicant KM 5,000 as compensation for non-pecuniary damage suffered up to and including the date of the Chamber's decision.

*Decision adopted 10 October 2000*

*Decision delivered 13 October 2000*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the applicant had not fully exhausted the available administrative remedies, and disagreed with the award of monetary relief made in favour of the applicant. The Chamber was of the opinion that the grounds upon which the respondent Party's request for review was based were in essence already examined by the First Panel, which considered the admissibility and merits of the case. The Chamber concluded that the request did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure and thus decided to reject the request for review.

*Decision adopted 7 December 2000*

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| <b>Case No.:</b>         | CH/98/548                            |
| <b>Applicant:</b>        | Savo IVANOVIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 July 2000 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a citizen of Bosnia and Herzegovina of Montenegrin origin. In 1992 he was convicted by the Sarajevo High Court of war crimes against the civilian population and sentenced to 15 years imprisonment. The Supreme Court of Bosnia and Herzegovina confirmed the judgment in December 1992. In September 1996 the applicant submitted a petition for the reopening of the criminal proceedings, which after several decisions by the Cantonal Court Sarajevo (previously the High Court) and the Supreme Court of the Federation, was finally rejected on 10 February 1998. The applicant complained of a violation of his right to an impartial tribunal on the ground that one of the judges of the Supreme Court panel rejecting his petition to reopen the case in February 1998 had also been a member of the Supreme Court panel that confirmed his conviction in 1992. He also complained that he did not receive a fair trial in the proceedings upon his petition to reopen the case.

### Admissibility (*Separate decision adopted 9 March 2000*)

Recalling that it is outside the Chamber's competence to decide whether events occurring before 14 December 1995 involve human rights violations, the Chamber concluded that the case fell within its competence *ratione temporis* only insofar as it concerned the proceedings leading to the rejection of the applicant's petition to reopen his case, but that the alleged violations of the applicant's rights to be informed of the charges against him and not to be compelled to testify against himself was inadmissible as incompatible *ratione temporis*.

Recalling that no right to a retrial is included in the rights and freedoms guaranteed by the Convention, the Chamber declared the applicant's complaint that he was not granted the possibility to prove his innocence in a new trial inadmissible as incompatible *ratione materiae*. However, the Chamber concluded that in light of the Parties' commitment to attain the "highest level of internationally recognized human rights" under the Human Rights Agreement, the Chamber was competent to examine the applicant's complaints relating to the proceedings initiated by his petition for the reopening of his case.

Mr. Andrew Grotrian, joined by Ms. Michèle Picard, Mr. Hasan Balić, Mr. Mehmed Deković, Mr. Viktor Masenko-Mavi, and Mr. Mato Tadić attached a dissenting opinion in which he argued that the Chamber should have declared inadmissible as incompatible *ratione materiae* the applicant's complaints relating to the proceedings initiated by his petition for the reopening of his case.

### Merits

#### *Article 6 of the Convention*

The Chamber considered that the panel of the Supreme Court of Bosnia and Herzegovina that decided on the appeal against the first instance conviction in 1992 and the panel of the Supreme Court of the Federation that decided on the appeal against the Cantonal Court's decision of 5 November 1997, rejecting the petition to reopen the case, decided substantially different questions. The first panel was confronted with a sweeping appeal directed against the evaluation of the evidence by the first instance court. The Second Panel found that the issue before it was limited to the question whether an expert opinion was to be considered "new evidence" within the meaning of the Federation Law on Criminal Procedure. Considering the difference in subject and nature of the

issues under scrutiny by the two Supreme Court panels in which the same judge took part, the Chamber concluded that there was no legitimate reason for the applicant to fear a lack of impartiality on the side of that judge. In addition, the Chamber considered that it could not find that the reasoning in the Supreme Court's final decision of 10 February 1998, by which the applicant's petition for the reopening of the criminal proceedings was finally rejected, was grossly inadequate and devoid of the appearance of fairness. Thus the Chamber found no violation of the applicant's rights under Article 6.

### **Dissenting Opinion**

Mr. Giovanni Grasso, joined by Mr. Dietrich Rauschning, Mr. Manfred Nowak, Mr. Miodrag Pajić and Mr. Vitomir Popović, attached a dissenting opinion in which he argued that there was a clear violation of the applicant's right to an impartial tribunal and his right to fair proceedings, and thus that the Chamber should have found a violation of Article 6 of the Convention.

*Decision adopted 5 June 2000*

*Decision delivered 6 July 2000*

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| <b>Case No.:</b>         | CH/98/575        |
| <b>Applicant:</b>        | Jasmin ODOBAŠIĆ  |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 11 May 2001      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

This case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, to regain possession of a parcel of land in Prnjavor upon which stands a building he used partly for living space and partly for business purposes. The applicant lived in and possessed these premises until 27 February 1994, when he was forcibly removed by local police. The following day, the Municipal Secretariat for Business, Urban Planning, and Finance of Municipality Prnjavor leased the premises to a private company. Over the course of the next several years, the applicant requested repossession of his property, but various organs of the Prnjavor Municipality did not respond favourably. In April 2000 the premises were finally returned to the applicant.

### **Admissibility**

Noting that the applicant utilized proper domestic remedies to try to regain possession of his house and business premises and that the applicant could not be held responsible for the failure of the government to adhere to the time limits for issuing decisions set by the applicable law, the Chamber found that domestic remedies had been exhausted. As for the respondent Party's *lis alibi pendens* argument regarding the applicant's claim before the CRPC (i.e. that the Chamber should reject the application as the same matter was pending before another Commission established by the Dayton Peace Agreement), the Chamber noted that he had already received a decision in his favour from the CRPC. Thus the Chamber declared the application admissible.

### **Merits**

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

The Chamber considered that the allocation and lease of the premises by the Prnjavor Municipality to the private company without any legal finding that the premises were abandoned and the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of his property constituted an "interference" with his right to peaceful enjoyment of his possessions. The government did not issue its decision on the applicant's request for repossession in a timely manner as required by the Law on the Cessation of the Application of the Law on the Use of Abandoned Property ("new Abandoned Property Law"). Thus it failed to act "subject to conditions provided for by law," and there was a violation of Article 1 of Protocol No. 1.

#### *Article 8 of the Convention*

Noting that the actions of the authorities of the Republika Srpska in acquiescing to the allocation and leasing of the applicant's property to the private company without legal basis and failing to permit the applicant to regain possession of his property in a timely manner were not subject to conditions provided for by law, the Chamber found that the interference with the applicant's right to respect for his private and family life and his home was not "in accordance with the law." Thus there was a violation of Article 8.

## **Remedies**

For the illegal use of his business premises since December 1995, the Chamber ordered the Republika Srpska to pay the applicant KM 15,600, or KM 300 per month commencing on 1 January 1996 through 30 April 2000. In addition, the Chamber ordered the Republika Srpska to pay the applicant KM 2,000 in respect of the suffering he experienced while attempting to regain possession of his home.

*Decision adopted 8 May 2001*

*Decision delivered 11 May 2001*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review arguing that the application should have been declared inadmissible because the applicant had failed to exhaust domestic remedies; the application concerned the same subject matter pending before the CRPC; and the application was manifestly ill-founded. In addition, the respondent Party disputed the decision to award pecuniary and non-pecuniary damages. The Chamber considered that the request did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted 6 July 2001*

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| <b>Case No.:</b>           | CH/98/603   |
| <b>Applicant:</b>          | R.T.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 8 November 2002   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicant's child was killed by shell fragments from a hand grenade accidentally activated by a soldier of the 3<sup>rd</sup> Corps of the Army of the Republic of Bosnia and Herzegovina in 1993. In 1996, the applicant initiated civil proceedings before the First Instance Court of Zenica (now the Municipal Court in Zenica) for compensation for pecuniary and non-pecuniary damages. Various appeals ensure, however, as of the date of the Chamber's decision, no compensation had been paid and the proceedings remained pending.

### **Admissibility**

The applicant directed her application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber held that the applicant had not provided any indication that Bosnia and Herzegovina was in any way responsible for the proceedings complained of before the Zenica Municipal and Cantonal Courts. The application was therefore declared inadmissible as incompatible *ratione personae* with the Agreement insofar as it was directed against Bosnia and Herzegovina.

The Federation of Bosnia and Herzegovina firstly objected to the admissibility of the application on the ground of non-exhaustion on the basis that proceedings before the Municipal Court in Zenica remained pending. However, in respect of the applicant's complaint concerning the length of proceedings, the Chamber did not consider that there was any effective remedy available to the applicant which she should be required to exhaust. The fact that the proceedings remained pending did not preclude the Chamber from examining on the merits whether their duration to date has been unreasonably long in violation of Article 6 of the Convention.

The Federation of Bosnia and Herzegovina further claimed that the application was inadmissible in respect to the six-months rule, as it was filed on 24 April 1998, more than one year after the decision of the First Instance Court of 18 February 1997 had become partly valid and effective. However, the Chamber held that the rule is designed to ensure a certain degree of legal certainty and to ensure that cases raising issues under the Convention are examined within a reasonable time. It further pointed out that where the alleged violation consists of a continuing situation, the six-month limit has no application unless and until that situation comes to an end.

The Chamber held that no other ground for declaring the case inadmissible had been established and declared the application admissible in relation to Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention insofar as it was directed against the Federation of Bosnia and Herzegovina.

### **Merits**

#### *Article 6 of the Convention*

The Chamber recalled that the first step in establishing the reasonableness of the length of proceedings was to determine the period of time to be considered. The period to be taken into consideration commenced on 30 April 1996 when the applicant initiated civil proceedings before the First Instance Court in Zenica requesting compensation for the death of her child. Approximately one year later, on 18 February 1997, the Court issued a decision awarding compensation to the

applicant. However, since then the applicant has not been able to obtain the awarded compensation because the proceedings were still ongoing until May 2002. Recalling the jurisprudence of the European Court the Chamber noted that enforcement proceedings constitute a second stage, which should be considered in assessing the duration of proceedings under Article 6 paragraph 1. Accordingly, proceedings had already lasted more than 6 years and remained pending.

Recalling *Mitrović*, the Chamber held that 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 other circumstances of the case. In this respect, the Chamber held that the factual and legal questions raised by the case did not appear overly complex as to require over six years of proceedings. Moreover, the Federation of Bosnia and Herzegovina had not justified the excessive procedural delays. The Chamber further held that the applicant had not contributed in any way to the length of proceedings.

The Chamber noted that where a decision of a tribunal is within its scope, Article 6 applies also to the enforcement proceedings. In the Chamber's opinion the inertia of the competent authorities in not taking the necessary steps to enforce the court decision and compensate the applicant involves the responsibility of the respondent Party. Accordingly, the Chamber held that the Federation of Bosnia and Herzegovina violated the right of the applicant protected by Article 6 paragraph 1 of the Convention to a fair hearing within a reasonable time in the determination of a civil right.

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

Taking into consideration its conclusion in relation to Article 6 of the Convention, the Chamber decided it was not necessary to separately examine the application under Article 1 of Protocol No. 1 to the Convention.

**Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to pay to the applicant compensation for pecuniary damages and interest, as awarded by the First Instance Court in its decision of 18 February 1997.

*Decision adopted 4 November 2002*

*Decision delivered 8 November 2002*

Editors note: A request for review was rejected by the Chamber on 7 February 2003

**Case No.:** CH/98/617

**Applicant:** Pavle LONČAR

**Respondent Party:** Federation of Bosnia and Herzegovina

**Date Delivered:** 9 March 2001

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina of Serb origin, previously worked in the Frankfurt (Germany) office of Unioninvest, a company registered in the Federation of Bosnia and Herzegovina. On 3 December 1993, the applicant received a fax from the General Director of Unioninvest in Sarajevo dismissing him because he had been causing “negative effects” on the economic development of the firm. In 1996 he initiated proceedings before the courts of the Federation against his dismissal, which remained pending.

### **Admissibility**

As for the applicant's claim regarding his dismissal, which occurred prior to 14 December 1995, the Chamber found that it was not competent *ratione temporis* to consider it and declared the claim inadmissible. As for the applicant's claim regarding the length of the court proceedings, the Chamber did not consider that there was any effective remedy available to the applicant which he should be required to exhaust, and declared it admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber referred to *Čuturić* (CH/98/1171) and the three factors to be considered under Article 6: the complexity of the case, the conduct of the applicant and the conduct of the national authorities. The Chamber found that this case did not appear to be a complex one; that the applicant did not contribute significantly to the delay in the proceedings; and that the main apparent reason for the delay was the Federation's failure to require Unioninvest fully to cooperate with the court. The Chamber therefore found that the length of time that the applicant's proceedings had been pending before the court was unreasonable, that this was as a result of the conduct of the Federation and its organs, and that the applicant's right to a fair trial within a reasonable time as guaranteed by Article 6 had been violated.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to ensure that the applicant's case was brought to a conclusion as a matter of urgency and if possible no later than 31 July 2001. The Chamber also ordered the Federation to pay the applicant KM 1,000 in respect of his emotional distress stemming from the absence of a final decision regarding his employment status.

### **Dissenting Opinion**

Mr. Mehmed Deković attached a partly dissenting opinion in which he argued that the Chamber should have ordered the Federation to take all necessary steps to ensure that the proceedings relating to the applicant's complaint be terminated as a matter of urgency after the issuance of the Chamber's decision without the qualification, “and if possible no later than 31 July 2001.”

*Decision adopted 7 March 2001*

*Decision delivered 9 March 2001*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/636        |
| <b>Applicant:</b>        | Nenad MILJKOVIĆ  |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 11 June 1999     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Yugoslavia of Serb descent. He and his family occupy a house in Banja Luka. On 19 September 1994, the applicant and his wife entered into a rental agreement with the owner of the house, who is of Bosniak descent, and who was leaving Banja Luka. In 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property in the relevant area declared the applicant to be an illegal occupant of the property and ordered him to vacate the property within three days under threat of forcible eviction. This decision was made under the old Abandoned Property Law. The applicant appealed to the Ministry for Refugees and Displaced Persons, but received no decision.

### **Admissibility**

Noting that even if the applicant had sought to avail himself of the remedies available to him, he would have had no prospect of success, the Chamber considered that there was no effective remedy available to the applicant which he should be required to exhaust, and thus declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property was an interference with the applicant's right to respect for his home. This interference was not "in accordance with the law" as required by Article 8 paragraph 2, since the old Abandoned Property Law, as applied in the applicant's case, had retroactively annulled his contract, which was lawful at the time of its conclusion. Accordingly, the interference had not been foreseeable for the purposes of Article 8, nor had the old Abandoned Property Law afforded any effective safeguard against possible abuse. Article 8 had therefore been violated.

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

The Chamber found that the retroactive nullification of the applicant's contract by application of the old Abandoned Property Law constituted an interference with his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. This interference was not proportional to the aim the old Abandoned Property Law was designed to achieve, as the applicant had been forced to bear "an individual and excessive burden." There was therefore a violation of Article 1 of Protocol No. 1.

#### *Article 13 of the Convention*

The Chamber found that the lack of any effective remedy under Republika Srpska law against the actions of the Commission for the Accommodation of Refugees and Administration of Abandoned Property constituted a violation of Article 13.

**Remedies**

The Chamber ordered the Republika Srpska to revoke the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property and to allow the applicant to enjoy undisturbed possession of the property concerned in accordance with the terms of the contract.

*Decision adopted 13 May 1999*

*Decision delivered 11 June 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/638                            |
| <b>Applicant:</b>        | Sretko DAMJANOVIĆ                    |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 February 2000                     |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant, who is a citizen of Bosnia and Herzegovina of Serb origin, was convicted of genocide and war crimes against the civilian population by a Military Court in Sarajevo in 1993. In December 1996 the applicant submitted a petition to the then Sarajevo High Court for the reopening of the criminal proceedings based on the discovery of new evidence. In May and October 1997 the (by then) Cantonal Court in Sarajevo rejected the petition. The applicant appealed these and other procedural decisions. His appeals were finally rejected by the Supreme Court of the Federation in February 1998. The applicant is the same as the applicant in case no. CH/96/30, in which the Chamber found the death sentence to be in violation of the Federation's obligations under the Human Rights Agreement. In the present case, the applicant complained that he did not receive a fair trial in the proceedings upon his request to re-open his case.

### Admissibility

The Chamber noted that the case-law of the European Commission of Human Rights suggested that Article 6 did not apply to the proceedings that led to the rejection of the applicant's petition to be granted a re-trial. However, the Chamber found that, in rejecting the applicant's petition, the Cantonal Court had "altered the factual finding" of the Military Court that had found the applicant guilty and had thereby re-determined the charges against the applicant. Thus the Chamber concluded that it was competent *ratione materiae* to examine the complaint on the merits.

### Merits

#### *Article 6 of the Convention*

The Chamber found that the applicant had not been granted a fair trial within the meaning of Article 6 in the proceedings that led to the rejection of his petition for a re-trial. This conclusion was reached on the basis of the finding that "the reasoning of the Cantonal Court is grossly inadequate and devoid of the appearance of fairness," and that the applicant did not enjoy a fair chance to appeal to the Supreme Court.

### Remedies

The Chamber ordered the Federation to grant the applicant a re-trial.

### Dissenting Opinions

Mr. Andrew Grotrian, joined by Mr. Mato Tadić, attached a dissenting opinion in which he argued that the Chamber should have found that Article 6 of the Convention was inapplicable to the applicant's proceedings in question. He further argued that the Chamber's order for a retrial went beyond the proper scope of the case.

Ms. Michèle Picard attached a partly dissenting opinion in which she argued that the application should have been declared inadmissible as incompatible *ratione materiae*.

*Decision adopted 14 January 2000*  
*Decision delivered 11 February 2000*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/645        |
| <b>Applicant:</b>        | Nada BLAGOJEVIĆ  |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 11 June 1999     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant entered into a rental agreement with the owner of an apartment in the Republika Srpska. This contract was renewed by the parties on a number of occasions, and when the owner left the Republika Srpska before or during the war the applicant remained in the apartment. In 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property in the relevant area declared the applicant to be an illegal occupant of the property and ordered him to vacate the property within three days under threat of forcible eviction. These decisions were made under the old Abandoned Property Law. The applicant appealed to the Ministry for Refugees and Displaced Persons, but received no decision.

### **Admissibility**

Considering the non-suspensive effect of the appeal lodged by the applicant and the size of the fee she would have had to pay to initiate an administrative dispute before the Supreme Court, the Chamber considered that there was no effective remedy available to the applicant which she should be required to exhaust, and declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

Noting that the old Abandoned Property Law requires a property to be entered into the minutes of abandoned property before it can be allocated to a person, but that no such entry was made in respect of the apartment in the present case, the Chamber found that the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property was not "in accordance with the law" within the meaning of Article 8 paragraph 2. In addition, this decision was not proportional to the aim of the old Abandoned Property Law, which was to provide accommodation for refugees and displaced persons in the Republika Srpska. Thus there was a violation of the applicant's right to respect for her home under Article 8.

### **Remedies**

The Chamber ordered the Republika Srpska to revoke the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property and to allow the applicant to enjoy undisturbed possession of the property concerned in accordance with the terms of the contract.

*Decision adopted 15 April 1999*

*Decision delivered 11 June 1999*

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|--------------------------|-----------------------|
| <b>Cases Nos.:</b>       | CH/98/659 et al.      |
| <b>Applicants:</b>       | Esfak PLETILIĆ et al. |
| <b>Respondent Party:</b> | Republika Srpska      |
| <b>Other Title:</b>      | “20 Gradiška Cases”   |
| <b>Date Delivered:</b>   | 10 September 1999     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

During the war, the applicants, all except one of whom are of Bosniak descent, were forced to leave properties they owned in Gradiška, the Republika Srpska. These properties were subsequently occupied by refugees or displaced persons of Serb origin. The cases concern the applicants' attempts, through various judicial and administrative proceedings over several years, to recover possession of their properties. Some of the applicants succeeded in regaining possession of all or part of their properties, but the majority of them did not.

### **Admissibility**

Noting that all of the applicants applied to the relevant governmental organ under the old Abandoned Property Law, that applicants in ten of the cases had initiated proceedings before the Court of First Instance in Gradiška, and that all applicants except one had applied under the new Abandoned Property Law to regain possession, the Chamber found that the applicants could not be required to exhaust any further domestic remedy. The Chamber also found that the applicants' failure to apply to the CRPC was not a ground to declare their cases inadmissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber held that the rejection by the Court of First Instance of the applicants' cases on the ground of lack of jurisdiction, finding that the courts were not competent to deal with such issues, and which finding had been upheld by the Supreme Court in a similar case, was a violation of their right to access to court for the determination of their civil rights and obligations, as guaranteed by Article 6. This applied even to those applicants who had not initiated court proceedings, as all such proceedings were rejected for lack of jurisdiction.

#### *Article 8 of the Convention*

The Chamber held that the failure of the authorities of the Republika Srpska to process the applicants' applications to regain possession and to allow them to actually regain possession was a violation of their right to respect for their homes, as guaranteed by Article 8.

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

The Chamber considered that the treatment of the applicants' properties constituted an interference with the applicants' rights to peaceful enjoyment of their possessions. The Chamber further found that the old Abandoned Property Law did not meet the standards of a “law” in a democratic society, which could justify the interference. In conclusion, the Chamber found that there had 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.

### *Discrimination*

The Chamber held that the applicants had been discriminated against in the enjoyment of the above rights because the old Abandoned Property Law, under which the applicants had sought to regain possession of their properties, was designed to prevent minority returns to Republika Srpska and to reinforce the ethnic cleansing which occurred during the war. Although the Republika Srpska adopted the new Abandoned Property Law to remedy the violations caused by the old Abandoned Property Law, it was not possible yet to tell if the new Abandoned Property Law was having this effect in practice. Thus the applications had suffered discrimination in the enjoyment of their rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

### **Remedies**

The Chamber ordered the Republika Srpska to enable the applicants who had not already done so to regain possession of their properties as soon as possible. It also ordered the Republika Srpska to pay compensation for moral suffering and for rent the applicants were forced to pay while waiting to regain possession of their properties. Total awards in each case ranged from KM 1,200 to KM 6,400.

### **Dissenting Opinion**

Mr. Vitomir Popović attached a dissenting opinion in which he argued that the Chamber should have declared the applications inadmissible for non-exhaustion of domestic remedies.

*Decision adopted 9 July 1999*

*Decision delivered 10 September 1999*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review on the following grounds: the Chamber was not competent to consider the applications, which should have been examined by the CRPC; the applications should have been declared inadmissible for failure to exhaust domestic remedies; and the compensation awards were excessive. Noting that the grounds upon which the respondent Party's request for review was based had already been raised in the proceedings before the Second Panel, the Chamber did not consider that it raised a serious issue affecting the interpretation or application of the Human Rights Agreement or an issue of general importance or that the whole circumstances justified reviewing the original decision. As the request did not meet the two conditions required by Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 5 November 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/660                            |
| <b>Applicant:</b>        | Sulejman BABIĆ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 8 February 2001                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He lived and worked as an administrator in Pale for the Municipality for fifteen years. During the war, when Pale was under the control of Serb forces, he was displaced to Sarajevo and worked under a compulsory work order for the Pale Municipality's office that had been temporarily established in Sarajevo. At the end of the hostilities and the integration of part of Pale into the Federation, the Mayor of the newly formed Pale Municipality issued an administrative decision transferring the applicant to a position in Prača. The applicant alleged that he was unable to travel through the Republika Srpska to Prača, rendering the decision to transfer him non-executable. The applicant's employment was terminated with effect from 3 June 1996. The applicant appealed the decisions to transfer him to Prača and terminate his employment to the then Court of First Instance I in Sarajevo in July of 1996. At the time of the Chamber's consideration, these proceedings remained pending. The applicant complained of a violation of his "right to work" and that there had been no significant development in the proceedings for more than four years.

### Admissibility

As for the applicant's complaint that his right to work was violated, the Chamber noted that the Convention does not contain a right to work as such or any right of access to public service or to fair wages, and declared the claim inadmissible *ratione materiae*. The Chamber declared the case admissible insofar as it related to the length of the applicant's domestic proceedings as it did not consider that there was any additional remedy available to the applicant that he should be required to exhaust.

### Merits

#### *Article 6 of the Convention*

The Chamber referred to the three factors to be considered under Article 6: the complexity of the case, the conduct of the applicant and the conduct of the national authorities. The Chamber found that this case did not appear to be a complex one; that there did not appear to be any conduct on the part of the applicant which could be considered to be responsible for the delay in the proceedings; and that the respondent Party had not proffered any explanation from which it would appear that the delays could not be imputed to the judicial authorities. Noting that an employee who considers that his working relationship was wrongly terminated has an important personal interest in a speedy outcome of the dispute and in securing a judicial decision on the lawfulness of this measure considering that his very livelihood depends on it, the Chamber found that there was a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1.

### Remedies

The Chamber ordered the Federation to take all necessary steps to ensure that the applicant's case was determined as a matter of urgency. The Chamber ordered the Federation to pay the applicant

*Case No. CH/98/660*

KM 1,000 in respect of his emotional distress stemming from the absence of a final decision regarding his employment status.

*Decision adopted 10 January 2001*

*Decision delivered 8 February 2001*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/688        |
| <b>Applicant:</b>        | Idhan MUFTIĆ     |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 November 2002  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant 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 initiated a lawsuit against his employer in May 1994 for unlawful dismissal. After six hearings and eight postponements and over five years of proceedings, the First Instance Court in Banja Luka 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, 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 remains pending before the District Court. The applicant alleges a violation of his right to a fair hearing within a reasonable time.

### Admissibility

The Chamber noted that the applicant's complaints related partially to events that occurred before 14 December 1995, when the Agreement entered into force. Accordingly, the Chamber declared inadmissible as incompatible *ratione temporis* with the Agreement the parts of the application that related to events that occurred before 14 December 1995. The Chamber held that no other ground for declaring the case inadmissible had been established and declared the application admissible in respect to the alleged violations of Article 6 of the Convention occurring after 14 December 1995.

### Merits

#### *Article 6 of the Convention*

The Chamber recalled that in its constant jurisprudence it has considered that disputes relating to employment relations concern “civil rights and obligations” within the meaning of Article 6 paragraph 1 of the Convention.

As to the fair hearing requirement, the Chamber held that the applicant had failed to offer any evidence capable of showing that the proceedings were unfair and the Chamber was unable to find any evidence as to a lack of fairness of the courts on its own motion. There was therefore no violation of the applicant's right to a fair hearing as guaranteed by Article 6 paragraph 1 of the Convention.

As to the length of the proceedings, the Chamber held that, considering its competence *ratione temporis*, it could assess the reasonableness of the length of the proceedings only with regard to the period after 14 December 1995. However, it could take into account what stage the proceedings had reached and how long they had lasted before that date. In the present case, the proceedings had lasted over 18 months when the Agreement entered into force and since that time the case had remained pending before the District Court for a period of 6 years and 10 months as of the date of the Chamber's decision. Recalling the criteria for assessing the reasonableness of the length of proceedings, as 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, the Chamber held

that the legal issues in the underlying case were not overly complex as to require more than five years of proceedings to issue a first decision. Additionally, the respondent Party had failed to state any specific reasons that could have justified the long length of the proceedings and had failed to attach any responsibility to the applicant. Nonetheless, having in mind the armed conflict, the Chamber noted that some delay by the domestic courts in issuing decisions must be accepted. However, the Chamber held that the present case had been pending for almost seven years after the cessation of the armed conflict.

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

### **Remedies**

The Chamber ordered 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. The Chamber further ordered the respondent Party to pay to the applicant the sum of 1,500 Convertible Marks in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

*Decision adopted 8 October 2002*

*Decision delivered 8 November 2002*

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|--------------------------|---|
| <b>Case No.:</b>         | CH/98/697                                 |
| <b>Applicant:</b>        | Bakir DŽONLIĆ                             |
| <b>Respondent Party:</b> | Republika Srpska                          |
| <b>Date Delivered:</b>   | 11 February 2000 (decision on the merits) |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual Background

The case concerns the attempts of the applicant, a citizen of Yugoslavia of Bosniak descent, to regain full possession of a house he owns in Banja Luka. In August 1995 two families displaced from Federation entered into and occupied a portion of the house without the permission of the applicant's father, who at that time was the owner of the house. The applicant and his father were left with the use of one room in the house. The applicant complained that the two families harassed him and his father and refused to contribute towards the expenses of the house. In February 1998 the Commission for the Accommodation of Refugees and Displaced Persons in Banja Luka, a department of the Ministry for Refugees and Displaced Persons, allocated the "surplus housing space" in the applicant's house to the families based on the old Abandoned Property Law, which allowed the Commission for the Accommodation of Refugees and Displaced Persons to allocate, under certain conditions, surplus space in residential buildings to refugees or displaced persons. The applicant initiated various administrative and judicial proceedings to have these persons evicted from his house, and in May 1999 the Commission for the Accommodation of Refugees and Displaced Persons ordered the applicant's house to be returned into his possession. However, the order was not enforced.

### Admissibility (*Separate decision adopted 13 May 1999*)

Noting that the respondent Party had not put forward any objection to the admissibility of the case, and that the case did not appear to be *prima facie* inadmissible, the Chamber declared the case admissible.

### Merits

#### *Article 6 of the Convention*

The Chamber noted that the Constitution of the Republika Srpska states that the establishment of legal rights and interests is the role of the courts and that for any subject matter to be removed from their jurisdiction, it would have to be done by a law or other valid legal instrument and would require a specific statement to this effect. In *Pletilić*, the Chamber found that in the absence of a specific statement to that effect, the old Abandoned Property Law did not remove court jurisdiction over property that was considered to be abandoned. Here, the Chamber found that it was 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. Thus there was a violation of his right to effective access to court as guaranteed by Article 6.

#### *Article 8 of the Convention*

The Chamber found that the decision of the Commission for the Accommodation of Refugees and Displaced Persons of February 1998 entitling the families to live in the applicant's house and the failure of the respondent Party to enforce the decision of the Commission of May 1999 constituted interferences with the applicant's right to respect for his home and family life. Noting that the Commission for the Accommodation of Refugees and Displaced Persons had taken no steps to have its decision of May 1999 enforced, despite the fact that it was obliged to do so by the law of the

Republika Srpska, the Chamber found that the interferences were not “in accordance with the law” as required by Article 8 paragraph 2. Thus there was a violation of the right of the applicant to respect for his right to home and family life as guaranteed by Article 8.

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

Given its finding that the failure of the Commission for the Accommodation of Refugees and Displaced Persons to implement its decision of May 1999 was not in accordance with the law, the Chamber found a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Republika Srpska to pay the applicant KM 250 per month for the occupation by the families of the house and KM 30 per month in respect of utility costs caused by such occupation, from 1 August 1999 until the end of the month in which the applicant would regain full possession of his house. The Chamber also awarded the applicant KM 2,000 in respect of moral suffering.

*Decision adopted 12 January 2000*

*Decision delivered 11 February 2000*

**DECISION ON REQUEST FOR REVIEW**

The applicant submitted a request for review in which he claimed that he should have been awarded compensation for the occupation of the house and in respect of utility costs as and from 13 February 1998, the date the Ministry for Refugees and Displaced Persons issued a decision entitling the current occupants of the house to occupy it, rather than from 1 August 1999. Noting that the First Panel had considered at length the remedies to be ordered, the Chamber considered that the remedies ordered by the First Panel were reasonable in view of the violations of the applicant's rights it found and that the arguments of the applicant therefore did not raise a serious question affecting the interpretation or application of the Human Rights Agreement. Thus the Chamber considered that the request did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted on 5 April 2000*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/698        |
| <b>Applicant:</b>        | Rasim JUSUFOVIĆ  |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 9 June 2000      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

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, the 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. In November 1996, the Commission for the Accommodation of Refugees and Displaced Persons in Bijeljina, a department of the Ministry for Refugees and Displaced Persons, allocated the applicant's apartment to another person based on the old Abandoned Property Law. The applicant initiated various domestic administrative and judicial proceedings to regain possession of the apartment, all without success. In August 1997 the applicant applied to the CRPC for a decision that he was the holder of the occupancy right and entitling him to regain possession of it and in October 1999 he received a favourable decision. However, this decision was not enforced.

### Admissibility

Noting, as in *Pletilić*, that having recourse to the courts was not an effective remedy, and that the authorities of the Republika Srpska had failed to adhere to the relevant time-limits for the administrative proceedings, the Chamber found that the applicant could not be required to exhaust any further domestic remedies. Noting that the applicant's application raised issues other than those within the competence of the CRPC, the Chamber found that it was not precluded from considering the case on the ground of *lis alibi pendens*. Thus the Chamber declared the case admissible.

### Merits

#### *Article 6 of the Convention*

The Chamber noted that the Republika Srpska Constitution states that the establishment of legal rights and interests is the role of the courts and that for any subject matter to be removed from their jurisdiction, it would have to be done by a law or other valid legal instrument and would require a specific statement to this effect. In *Pletilić*, the Chamber found that in the absence of a specific statement to that effect, the old Abandoned Property Law did not remove court jurisdiction over property that was considered to be abandoned. Here, the Chamber found that it was 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. Thus there was a violation of his right to effective access to court as guaranteed by Article 6.

#### *Article 8 of the Convention*

The Chamber noted that the applicant was 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. The Chamber considered that the rejection by the courts of the Republika Srpska of the applicant's application to regain possession of his home was not in accordance with the Constitution of the Republika Srpska. Thus the failure of the courts to decide upon the applicant's proceedings was not "in accordance with the law" as required by Article 8 paragraph 2, and the Chamber found that there was a violation of Article 8.

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

Given its finding that the failure of the authorities to allow the applicant to regain possession was not in accordance with the law, the Chamber found a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

*Discrimination*

Noting that the applicant was clearly entitled under the law of the Republika Srpska to regain possession of the apartment, but that despite his efforts, he had not succeeded in regaining possession, and that the respondent Party had not put forward any credible reasons for this delay, the Chamber considered that the only plausible reason for the deliberate obstruction experienced by the applicant in seeking to regain possession was the fact that he was of Bosniak origin. Thus the Chamber concluded that the applicant had been discriminated against in the enjoyment of his rights under the aforementioned provisions and that this discrimination had been on the ground of his Bosniak origin.

**Remedies**

The Chamber ordered the Republika Srpska to pay the applicant KM 1,200 as compensation for moral suffering; KM 8,400 in respect of his inability to use the apartment concerned in the application from 1 January 1997 until 30 June 2000; and KM 200 per month from 1 July 2000 until the end of the month in which he would regain possession of that apartment.

*Decision adopted 10 May 2000*

*Decision delivered 9 June 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/704                            |
| <b>Applicant:</b>        | Jovanka KOVAČEVIĆ                    |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 January 2002                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant owned a house and business premises (restaurant) built on socially owned land in the Municipality of Sanski Most, which she left in October 1995. On 19 December 1995 the house burnt down completely in a fire. In 1997 the Municipality classified the plots on which the applicant's house had stood before the fire to be undeveloped building land and in 1998 allocated them, with permission to build, to another Municipality citizen. The applicant's priority right to reconstruct the house on the land was ignored. The applicant applied to the Municipality to stop the ongoing construction work on the plots. However, no such order was made and a house was erected on the plots in question. The applicant died in November 1998. Her daughter pursued the case.

### Admissibility

The Respondent Party argued that the Chamber was not competent *rationae materiae*, as the subject matter came within the competence of CRPC, and that the case should therefore be declared inadmissible. Further, that the applicant had not exhausted domestic remedies, because she failed to apply to CRPC. The Chamber rejected these arguments. Firstly, there was no doubt that the Chamber was competent to consider alleged violations of property rights; secondly, applicants were free to choose whether they applied to the Chamber under Annex 6 to the General Framework Agreement, or to the CRPC under Annex 7 to the General Framework Agreement; thirdly, the requirement to exhaust domestic remedies under Article VIII(2)(a) of Annex 6 does not include recourse to other Commissions established by the General Framework Agreement, as already established in *Pletilić*.

### Merits

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

The Chamber observed that under domestic law in cases of destruction of property, the owner retains a priority right to construct on the parcel. The Chamber held that the denial of the priority right to construct and the lack of compensation for the denial amounted to an unjustified deprivation of the applicant's right to enjoy possessions in violation of Article 1 of Protocol No. 1 to the Convention.

#### *Article 6 of the Convention*

As the Chamber decided that the case primarily raised issues under Article 1 of Protocol No. 1 to the Convention, it considered that, in light of the finding of a violation of that Article, it was not necessary for it to examine the case under Article 6 of the Convention.

### Remedies

The Chamber ordered the respondent Party to allocate to the applicant's daughter, within three months from the date on which the decision became final and binding, a plot of city building land of equivalent size, value and quality as the plots which the applicant had been deprived of.

*Decision adopted 8 January 2002*

*Decision delivered 11 January 2002*

## **DECISION ON REQUEST FOR REVIEW**

In its request for review, the applicant challenged the Chamber's decision on the following grounds: a) the Chamber had failed to consider the respondent Party's responsibility for the destruction of the house; b) there was no order for compensation in regard to the destroyed house; c) there was no order for compensation of non-pecuniary damage although the case is similar to the decision of the Chamber in the case *Islamic Community - Zvornik*, in which such a compensation was ordered. The Chamber stated that the applicant had failed to give any grounds as to why the issues referred to in the request for review would raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance". As the request for review failed to meet the first of the two requirements set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber rejected the request for review.

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/98/706, 740 and 776  |
| <b>Applicants:</b>         | Zijad ŠEĆERBEGOVIĆ, Josip BIOČIĆ and Nikola OROZ                |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>        | “3 JNA Pension Cases”   |
| <b>Date Delivered:</b>     | 7 April 2000  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are citizens of Bosnia and Herzegovina living in the Federation. They are former officers of the JNA who retired before 1992. Until the outbreak of the war they received their pensions from the Institute for Social Insurance of Army Insurees in Belgrade, to which they had paid contributions during their life as active soldiers. 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 the Law on Pensions and Disability Insurance of the Federation, which entered into force on 31 July 1998.

### Admissibility

The Chamber noted that pensions are not among the matters within the responsibility of the institutions of the State listed in the Constitution of Bosnia and Herzegovina and that State institutions did not take any action in this matter. The Chamber also noted that until the entry into force of the Law on Pensions and Disability Insurance of the Federation, the payment of an amount equivalent to 50 percent of the original JNA pensions was due to legislation enacted by the Republic of Bosnia and Herzegovina prior to the entry into force of the Dayton Peace Agreement. The Chamber concluded that no responsibility could attach to the State and declared the applications inadmissible as it had no competence *ratione personae* to continue to consider them insofar as they were directed against the State. Noting that the complaints concerned a situation that had lasted for nearly eight years and was still continuing, the Chamber found that the six-month rule was inapplicable in the applicants' cases, and declared the applications admissible insofar as they were directed against the Federation.

### Merits

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

The Chamber noted that the European Court and Commission of Human Rights have considered that although the Convention does not guarantee a right to a specific welfare benefit, the right to a pension can, under certain circumstances, amount to a possession protected by Article 1 of Protocol No. 1. It also noted, however, that the applicants had not paid any contributions to the Pension Fund of Bosnia and Herzegovina, and that they had no legal relationship to that fund before the enactment of the decree issued in September 1992. The Chamber therefore concluded that the applicants had no claim to receive the full JNA pensions which could be regarded as a possession under Article 1 of Protocol No. 1.

#### *Discrimination*

The Chamber considered possible discrimination in the enjoyment of the right to social security protected by Article 9 of the ICESCR. The Chamber first considered whether JNA pensioners were treated differently from the civilian pensioners of the Pension Fund of Bosnia and Herzegovina. Finding that the civilian pensioners were not in a relevantly similar position to the JNA pensioners, the Chamber concluded that no issue of differential treatment of the applicants, and therefore no

issue of discrimination in the enjoyment of the right to social security, arose in relation to the civilian pensioners.

The Chamber next considered whether JNA pensioners were treated differently from the military pensioners of the Pension Fund of Bosnia and Herzegovina who served in the JNA before joining the Army of Bosnia and Herzegovina or the Army of the Federation. The Chamber noted that these persons received credit for the time served in the JNA for the purpose of their pension treatment. It also noted that the average pension of this group was considerably higher than the average payment received by the JNA pensioners and the average pension of the civilian pensioners. The Chamber found that the difference in treatment between the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation and the JNA pensioners was justifiable, considering that the former had served in the armed forces of the country whose pension fund paid their pensions. Thus the Chamber found no discrimination in the enjoyment of the right to social security under Article 9 of the ICESCR.

### **Dissenting Opinion**

Mr. Viktor Masenko-Mavi attached a dissenting opinion in which he argued that the Chamber should have declared the applications admissible also insofar as they related to the State, and that the Chamber should have found that 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 and that both respondent Parties were responsible for these violations.

*Decision adopted 9 March 2000*

*Decision delivered 7 April 2000*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/710        |
| <b>Applicant:</b>        | D.K.             |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 10 December 1999 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant lived in an apartment in Kozarska Dubica, the 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.

On 28 May 1998 the Secretariat for Administrative Affairs of the Municipality of Kozarska Dubica 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 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.

### **Admissibility**

Finding that no effective domestic remedy was available to the applicant, the Chamber declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber noted that the applicant lived in the apartment from January 1995 until his eviction in July 1998. Thus, even though under the law of the Republika Srpska the applicant had no right to reside in the apartment at the time of his eviction, the Chamber considered the apartment to be the applicant's "home" for the purposes of Article 8. The Chamber held that the eviction of the applicant constituted a violation of his right to respect for his home as guaranteed by Article 8. Orders for provisional measures issued by the Chamber are binding in Bosnia and Herzegovina and its entities. Accordingly, an eviction in violation of an order for provisional measures is not in accordance with the law as required by Article 8. Thus the Chamber found a violation of Article 8.

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

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. In this case, the applicant had not lived in the apartment for this length of time. 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. Therefore, at the time of his eviction from the apartment, the applicant had no protected right over

the apartment, and no right that could be considered to constitute a "possession" within the meaning of Article 1 of Protocol 1. Thus the Chamber found no violation of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber held that its finding of a violation of the rights of the applicant as guaranteed by Article 8 of the Convention constituted a sufficient remedy.

### **Dissenting Opinion**

Mr. Jakob Möller and Mr. Vitomir Popović attached a dissenting opinion in which they argued that, although the failure to comply with the order for provisional measures constituted a serious breach by the respondent Party of its obligation under Article X(5) of the Agreement to cooperate fully with the Chamber, there was no indication that the eviction of the applicant was inconsistent with Article 8 of the Convention.

*Decision adopted 2 November 1999*

*Decision delivered 10 December 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/724        |
| <b>Applicant:</b>        | Dragan MATOVIĆ   |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 12 May 2000      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serb descent from Bijeljina, the Republika Srpska. 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 to a twenty-year prison sentence.

### **Admissibility**

As to the length of the proceedings, the Chamber concluded that the application should be accepted and examined on its merits insofar as it related to violations of the applicant's human rights which were alleged to have occurred or had been threatened to occur since 14 December 1995. Noting that the Supreme Court had commuted the death sentence, the Chamber considered that any violation of the applicant's right to life and not to be subjected to the death penalty was remedied. Thus the Chamber concluded that this part of the application had been resolved, and struck it out.

### **Merits**

#### *Article 6 of the Convention*

The Chamber recalled that the factors to be taken into account in determining whether the length of proceedings has been reasonable are the complexity of the case, the conduct of the applicant and the conduct of the national authorities. The Chamber considered that this was a complex case, considering the seriousness of the committed crime and the sentence pronounced. However, the Chamber found that the delay of the applicant's proceedings was due to the fact that the Military Court was awaiting amendments to the Criminal Law of the Republika Srpska. Thus the Chamber found that the case was not examined within a reasonable time and found a violation of Article 6 paragraph 1.

### **Remedies**

Noting 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 to twenty years' imprisonment, and that the applicant received full credit for the time spent in detention before the decision of the Supreme Court, the Chamber considered that the finding of a violation of the applicant's rights as guaranteed by Article 6 of the Convention was a sufficient remedy.

*Decision adopted 6 April 2000*

*Decision delivered 12 May 2000*

|                          |                      |
|--------------------------|----------------------|
| <b>Cases Nos.:</b>       | CH/98/752 et al.     |
| <b>Applicants:</b>       | Mirsada BAŠIĆ et al. |
| <b>Respondent Party:</b> | Republika Srpska     |
| <b>Other Title:</b>      | “15 Gradiška Cases”  |
| <b>Date Delivered:</b>   | 10 December 1999     |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are citizens of Bosnia and Herzegovina of Bosniak descent. They are owners of real property in Gradiška, the Republika Srpska, who were forced to leave during the war. Their properties were occupied by refugees and internally displaced persons of Serb origin. Most of the applicants left the Republika Srpska during the war and had returned to the area. Three of the applicants had regained possession of their properties. The cases concern their attempts before various authorities of the Republika Srpska to regain possession. The applicants took 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 and the Ministry for Refugees and Displaced Persons under the old Abandoned Property Law; initiating proceedings before the Court of First Instance in Gradiška; applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property under the new Abandoned Property Law; and applying to various political institutions of the Republika Srpska.

### Admissibility

The Chamber noted that while the new Abandoned Property 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. The Chamber further noted that the applicants' failure to apply to the CRPC did not bar the Chamber from considering their cases. Thus, as the applicants could not be required to exhaust any further remedy, the Chamber declared the cases admissible.

### Merits

#### *Article 8 of the Convention*

The Chamber found that the old Abandoned Property Law did not meet the standards of a “law” as required by Article 8 paragraph 2. The Chamber considered that the new Abandoned Property Law did meet the requirements of Article 8 paragraph 2, as it grants the applicants a right to regain possession of their properties. However, the realisation of this right was delayed in twelve of the cases. Accordingly, the conduct of the respondent Party in relation to the applicants in these twelve cases was not “in accordance with the law” as required by Article 8 paragraph 2. Thus there was a violation of the rights of all the applicants to respect for their homes under Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that there was a violation of the rights of all of the applicants to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

Noting that the practical effect of the consistent practice of the Court of First Instance in Gradiška to decline jurisdiction in cases of this nature, which practice had been upheld by the Supreme Court,

was that it was or would 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, the Chamber found a violation of the applicants' rights to effective access to court as guaranteed by Article 6.

#### *Discrimination*

Noting that all of the applicants are of Bosniak origin, the Chamber found that the passage and application of the old Abandoned Property Law constituted discrimination against the applicants in their right to respect for their homes, to peaceful enjoyment of their possessions, and of access to court. This discrimination was based on the ground of national origin in respect of all of the applicants, and the new Abandoned Property Law had failed to remedy this situation. Thus the Chamber found that the applicants had 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.

#### **Remedies**

The Chamber ordered the Republika Srpska to enable the applicants who had not already done so to regain possession of their properties without further delay. The Chamber ordered the Republika Srpska to pay each of the applicants sums ranging from KM 1,200 to KM 3,400 for rental payments incurred in respect of paying for alternative accommodation and/or for mental suffering.

*Decision adopted 6 December 1999*

*Decision delivered 10 December 1999*

#### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that there had been no violation of the rights of the applicants as protected by Article 8 and Article 1 of Protocol No. 1; that the Chamber was wrong to conclude that the applicants were discriminated against; that the applicants had not exhausted domestic remedies; and that the compensation awards were inappropriate. As the grounds for the request for review had, in large part, already been raised by the respondent Party and dealt with, during consideration of the cases by the Second Panel, and as the remaining grounds did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance, the Chamber found that the request did not meet the two requirements of Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted 11 February 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/756                            |
| <b>Applicant:</b>        | Đ.M.                                 |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 14 May 1999                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, of Bosniak origin, owns a house in Kablići, the Federation. In 1993 a family of Croat origin occupied the house by force, and the applicant and her family left the country shortly thereafter. The applicant initiated proceedings before the Livno Municipal Court and municipal authorities in 1997, seeking to regain physical possession of the house. At the time of the Chamber's consideration, there had been no developments in the proceedings, and the Croat family remained in the house. In 1998 the applicant submitted an application to the CRPC.

### **Admissibility**

The Chamber noted that the applicant's complaints concerned actions and omissions of the authorities of the respondent Party from October 1997 onwards, which fall within the Chamber's competence *ratione temporis*. The Chamber further noted that the applicant had raised several complaints substantially different from the subject matter which she had brought before the CRPC and which fall outside the competence of the CRPC, and thus that the application was not inadmissible *lis alibi pendens*. Recalling *Čegar*, the Chamber could not find it established that an effective remedy was available to the applicant.

### **Merits**

#### *Discrimination*

The Chamber found a pattern of discrimination consisting of a failure on the part of the Livno Municipal Court and municipal authorities to process claims for repossession of property belonging to returning Bosniaks or of not enforcing judgments rendered in favour of such plaintiffs against defendants of the Croat majority. The Chamber concluded that the applicant had 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 ICCPR.

#### *Article 6 of the Convention*

The Chamber found that an objective observer could legitimately doubt that the Municipal Court in Livno in general and the judge in the applicant's case in particular had been, and would be, independent. A court not entirely independent of political bodies could not satisfy the requirement of impartiality in Article 6, and thus the applicant could not expect to receive a fair hearing in her case. There had thus been a violation of Article 6 paragraph 1.

#### *Article 8 of the Convention*

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 her house amounted to a lack of respect for her "home" within the meaning of Article 8 paragraph 1. Accordingly, there had also been a violation of Article 8.

*Article 13 of the Convention*

As there had been no response whatsoever to the applicant's various claims and petitions to the administrative authorities, there had been a violation of Article 13.

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

The authorities' failure to assist the applicant in recovering her house amounted to a violation of her rights under Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Federation to take, through its authorities, immediate steps to reinstate the applicant into her house. The Chamber ordered the Federation to pay the applicant, in non-pecuniary damages, KM 4,000 and an additional sum of KM 10 each day from the date of delivery of the Chamber's decision until the applicant would regain possession of her house.

**Dissenting Opinion**

Mr. Vlatko Markotić and Mr. Želimir Juka, joined by Mr. Vitomir Popović and Mr. Miodrag Pajić, attached a dissenting opinion in which they argued that the applicant had the right to return through the machinery of the CRPC, not through that of the Chamber, and that the Chamber had failed to take into account the complex social and economic conditions in Bosnia and Herzegovina.

*Decision adopted 13 April 1999*

*Decision delivered 14 May 1999*

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|--------------------------|-------------------|
| <b>Case No.:</b>         | CH/98/764         |
| <b>Applicant:</b>        | Milan KALIK       |
| <b>Respondent Party:</b> | Republika Srpska  |
| <b>Date Delivered:</b>   | 10 September 1999 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina occupying a house in Banja Luka. 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. The agreement was certified on the same day by the Municipality of (Bosanski) Petrovac in the Federation. On 13 July 1998 officials of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka, a department of the Ministry for Refugees and Displaced Persons, came to the house with members of the police and attempted to evict the applicant and his family. They did not give the applicant a copy of any decision ordering his eviction. The eviction was unsuccessful and the officials said they would return. At the time of the Chamber's consideration, the applicant still occupied the house.

### **Admissibility**

Recalling *Onić*, the Chamber did not consider that there was any domestic remedy available to the applicant which he should be required to exhaust, and declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber noted that the old Abandoned Property Law requires a property to be entered into the minutes of abandoned property before it can be reallocated. In this case, the respondent Party had not provided any evidence that any such entry was made in respect of the house, and the applicant was never given any decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property issued under the Law. Thus the Chamber found that the attempts of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property to evict the applicant from the house were not "in accordance with the law" within the meaning of Article 8 paragraph 2 and there was a violation of Article 8.

### **Remedies**

The Chamber ordered the Republika Srpska to ensure that the Commission for the Accommodation of Refugees and the Administration of Abandoned Property allowed the applicant to enjoy undisturbed occupancy of the house concerned in the application in accordance with the terms of his agreement with the owner.

*Decision adopted 7 July 1999*

*Decision delivered 10 September 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/774                            |
| <b>Applicant:</b>        | Sead KARAMEHMEDOVIĆ                  |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 July 2000                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

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. 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 Dayton Peace Agreement and the integration of Ilidža into the territory of the Federation the applicant's ex-wife returned to the apartment, but forcibly prevented the applicant from moving into it thereafter. In June 1996 the applicant initiated court proceedings against his ex-wife with a view to repossessing the part of the apartment in which he had lived before the war. At the time of the Chamber's consideration, the proceedings remained pending.

### **Admissibility**

Noting that there was no effective remedy that the applicant could be required to exhaust, the Chamber declared the case admissible.

### **Merits**

#### *Article 6 of the Convention*

Considering that the case was not so complex in nature as to require the court more than two and a half years to determine it, that there was no indication that the length of the proceedings could be attributed to the conduct of the applicant, and that a swift determination of the case would have been of great importance to the applicant, who had lived at different places for the time of the pending proceedings and whose health was poor, the Chamber found that there was a violation of the applicant's right to a hearing within a reasonable time within the meaning of Article 6 paragraph 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps in order to ensure that the applicant's case was determined by the court in an expeditious manner.

*Decision adopted 7 June 2000*

*Decision delivered 6 July 2000*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/777        |
| <b>Applicant:</b>        | Emadin PLETILIĆ  |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 October 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin and the owner of real property in Gradiška, the Republika Srpska, which he was forced to leave during the war. At the time of the Chamber's consideration, the property was occupied by two families of refugees and displaced persons of Serb origin. In 1993, the applicant and his wife left Gradiška after having arranged with one of the families to look after it. They returned to Gradiška after the war ended to find the property occupied by the families. The applicant took the following steps to regain possession of his property: applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Gradiška and the Ministry for Refugees and Displaced Persons under the old Abandoned Property Law; initiating proceedings before the Municipal Court in Gradiška which rejected the case for lack of jurisdiction, and applying to the Ministry for Refugees and Displaced Persons under the new Abandoned Property Law.

### **Admissibility**

Recalling *Onić* and *Pletilić*, the Chamber found that the applicant could not be required to exhaust any further domestic remedy, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

Recalling *Pletilić*, the Chamber found that the old Abandoned Property Law did not meet the standards required of a "law" under Article 8 paragraph 2, and thus that there was a violation of the applicant's rights as guaranteed by Article 8.

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

Recalling *Pletilić*, the Chamber found that there had been a violation of the applicant's right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

Recalling *Pletilić*, and noting that the practical effect of the court decision was that it was or would 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, the Chamber found a violation of the applicant's right to effective access to court as guaranteed by Article 6.

#### *Discrimination*

Recalling its decision in *Pletilić* that the passage and application of the old Abandoned Property Law constitute a discrimination against applicants of Bosniak origin, which served to prevent minority return and to protect the persons of Serb origin occupying property which was considered abandoned under the old Abandoned Property Law, the Chamber found that the applicant was 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.

### **Remedies**

The Chamber ordered the Republika Srpska to enable the applicant to regain possession of his property without further delay and to pay to the applicant KM 1,200 by way of compensation for mental suffering.

*Decision adopted 9 September 1999*

*Decision delivered 8 October 1999*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the applicant had failed to exhaust domestic remedies. It further stated that it was not responsible for the applicant having left his home, that it appropriately re-allocated the home following his absence, and that it had afforded the applicant the opportunity to return by making available administrative and judicial means to do so. With regard to the award of compensation, the respondent Party objected to any award for mental suffering because all other citizens also suffered mental distress as a result of the war. Lastly, the respondent Party argued that the amount awarded was too high. The Chamber stated that at no stage of the proceedings did the respondent Party submit any observations, let alone observations on the points raised in the request for review. The Chamber therefore did not consider that “the whole circumstances justify reviewing the decision” as required by Rule 64 paragraph 2(b) of its Rules of Procedure. As the request for review did not meet the condition set out in Rule 64 paragraph 2(b), the Chamber decided to reject the request for review.

*Decision adopted 10 January 2002*

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|----------------------------|---|
| <b>Case No.:</b>           | CH/98/799   |
| <b>Applicant:</b>          | Željko BRČIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 10 May 2002   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The case concerns the attempts of the applicant to regain possession of his apartment located in the municipality Mostar Stari Grad and purchased in February 1992 from the JNA. The applicant tried to solve his case through judicial and administrative organs. However, the competent authorities have failed to reinstate him into his apartment.

### Admissibility

The Chamber declared the application inadmissible *ratione personae* as against Bosnia and Herzegovina as the case does not raise any issues engaging the responsibility of Bosnia and Herzegovina. The applicant could not be required to exhaust any further domestic remedies and the application was declared admissible in so far as directed against the Federation of Bosnia and Herzegovina. Regarding the applicant's claim that he had been discriminated against, the Chamber noted that the applicant had not submitted any evidence to support his allegation. It therefore declared this part of the application inadmissible as unsubstantiated and manifestly ill-founded.

### Merits

#### *Article 8 of the Convention*

After recalling the *Eraković* decision, the Chamber concluded that Article 8 had 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.

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

The Chamber 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 was 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 to the Convention. Accordingly, the right of the applicant under this provision had been violated and this violation was ongoing. Furthermore, the Chamber, after recalling the similar cases *Medan et al.* concluded that the actions of the Federation Ministry of Defence Sarajevo had led to the applicant's continuing inability to register as the owner of the apartment and the Federation of Bosnia and Herzegovina had thus violated Article 1 of Protocol No. 1 to the Convention.

### Remedies

The Chamber ordered the Federation to allow the applicant to be registered as the owner of the apartment and reinstate him into possession of his apartment immediately and in any event at the latest by 10 June 2002. Further, the Chamber ordered the respondent Party to pay to the applicant the sum of KM 10,000 by way of compensation for non-pecuniary damage and for the loss of use of his apartment. Additionally, it ordered the Federation to pay to the applicant KM 200 for each further month that he remained excluded from his apartment as from June 2002 until the end of the month

in which he was reinstated, each of these monthly payments to be made within thirty days from the end of the month to which they relate.

*Decision adopted 6 May 2002*

*Decision delivered 10 May 2002*

## **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review, in which it argued that the Chamber should have declared the case inadmissible for non-exhaustion of domestic remedies; that the Chamber had misinterpreted the respondent Party's observations and that it has continuously considered the apartment of the applicant as his home; and that the order to compensate the applicant for loss of possibility to use his home was excessive. The applicant submitted a request for review too, in which he argued that the decision did not solve his working and health situation and that the compensation is not proportionate to his suffering. The Chamber stated that Federation and the applicant had failed to give any grounds as to why the issues referred to in the requests for review would raise "a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance". As the requests for review failed to meet the first of the two requirements set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 5 July 2002*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/800        |
| <b>Applicant:</b>        | Ljiljana GOGIĆ   |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 11 June 1999     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant occupies a house in Kozarska Dubica, the Republika Srpska, which she uses as a business 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, 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, a department of the Ministry for Refugees and Displaced Persons, 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. These decisions were made under the Abandoned Property Law. The applicant appealed to the Ministry for Refugees and Displaced Persons, but received no decision.

### **Admissibility**

Noting that even if the applicant had sought to avail herself of the remedies available to her, she would have had no prospect of success. The Chamber considered that there was no effective remedy available to the applicant which she should be required to exhaust, and declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

Noting that while she does not actually reside in the premises, the applicant operates a shop there which is the sole source of income for herself and her child. The Chamber considered it appropriate to interpret the word “home” in the context of Article 8 to include the premises concerned in the present case. The Chamber found that the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property was an interference with the applicant’s right to respect for her home. This interference was not “in accordance with the law” as required by Article 8 paragraph 2, since the Abandoned Property Law, as applied in the applicant’s case, had retroactively annulled her contract, which was lawful at the time of its conclusion. Accordingly, the interference had not been foreseeable for the purposes of Article 8, nor had the Abandoned Property Law afforded any effective safeguard against possible abuse. Article 8 had therefore been violated.

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

The Chamber found that the retroactive nullification of the applicant’s contract by application of the Abandoned Property Law constituted an interference with her right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1. This interference was not proportional to the aim sought to be achieved as the applicant had been forced to bear “an individual and excessive burden.” There was therefore a violation of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska to revoke the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property and to allow the

applicant to enjoy undisturbed possession of the property concerned in accordance with the terms of the contract.

*Decision adopted 13 May 1999*

*Decision delivered 11 June 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/814        |
| <b>Applicant:</b>        | Darko PRODANOVIĆ |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 11 June 1999     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina who occupies a house in Kozarska Dubica, the 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, a department of the Ministry for Refugees and Displaced Persons, 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. This decision was made under the old Abandoned Property Law.

### **Admissibility**

The Chamber noted that even if the applicant had sought to avail himself of the remedies available to him, he would have had no prospect of success. Thus the Chamber considered that there was no effective remedy available to the applicant which he should be required to exhaust, and declared the application admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property was an interference with the applicant's right to respect for his home. This interference was not "in accordance with the law" as required by Article 8 paragraph 2, since the old Abandoned Property Law, as applied in the applicant's case, had retroactively annulled his contract, which was lawful at the time of its conclusion. Accordingly, the interference had not been foreseeable for the purposes of Article 8, nor had the old Abandoned Property Law afforded any effective safeguard against possible abuse. Thus there was a violation of Article 8.

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

The Chamber found that the retroactive nullification of the applicant's contract by application of the Law constituted an interference with his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. This interference was not proportional to the aim sought to be achieved as the applicant had been forced to bear "an individual and excessive burden." Thus there was a violation of Article 1 of Protocol No. 1.

#### *Article 13 of the Convention*

The Chamber found that the absence of any effective remedy under the law of the Republika Srpska against the actions of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property constituted a violation of Article 13.

## **Remedies**

The Chamber ordered the Republika Srpska to revoke the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property and to allow the applicant to enjoy undisturbed possession of the property concerned in accordance with the terms of the contract.

*Decision adopted 13 May 1999*

*Decision delivered 11 June 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/834        |
| <b>Applicant:</b>        | O.K.K.           |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 9 March 2001     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serb descent residing in Germany. She and her daughter are pre-war co-owners of an apartment 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 CRPC, which issued a decision recognising her ownership rights. However, that decision was not executed.

### **Admissibility**

Noting that it was still open to the applicant to make further attempts to have her CRPC decision enforced, but that she had already made repeated unsuccessful attempts to remedy her situation, the Chamber found that she could not be required to pursue any further remedy provided by domestic law, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the result of the inaction of the Republika Srpska was that the applicant could not return to her home and that there was an ongoing interference with her right to respect for her home. Noting that under the Law on Implementation of the Decisions of the CRPC, the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within thirty days of the date of the request for such enforcement, but that the applicant had received no decision on her request to have the CRPC decision enforced, the Chamber found that the failure of the competent administrative organ to decide upon the applicant's request was not "in accordance with the law" and thus that there was a violation of Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that there was a violation of the right of the applicant to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered 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. The Chamber ordered the Republika Srpska to pay to the applicant KM 2,000 for non-pecuniary damage; 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; and KM 300 for each further month that she continued to be forced to live in alternative accommodation as from 1 April 2001 until the end of the month in which she would be reinstated.

*Decision adopted 6 March 2001*

*Decision delivered 9 March 2001*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review disagreeing with the award of monetary compensation in favour of the applicant. The Chamber found that the request did not meet either of the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure and decided to reject the request for review.

*Decision adopted 10 May 2001*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/866        |
| <b>Applicant:</b>        | Nataša CAJLAN    |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 9 March 2000     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

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 the apartment in 1995 by displaced persons of Serb origin. After initiating 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, her husband's employer. The relevant municipal authorities sought the eviction of the applicant from this second apartment.

### **Admissibility**

Recalling *Pletilić*, the Chamber found that the applicant could not be required to exhaust any further domestic remedies, and declared the case admissible.

### **Merits**

#### *Article 6 of the Convention*

Recalling *Pletilić*, and noting that the effect of the practice of the courts in the Republika Srpska, i.e. to decline jurisdiction in cases of this nature, was that it was impossible for the applicant to have the merits of her civil action against the occupants of the first apartment determined by a tribunal within the meaning of Article 6 paragraph 1, the Chamber found a violation of her right to effective access to court as guaranteed by Article 6.

#### *Article 8 of the Convention*

Noting that the Court of First Instance in Banja Luka had rejected the applicant's application to regain possession of her home as it considered itself incompetent in such matters, and that this standpoint was not in accordance with the Constitution of the Republika Srpska, the Chamber found that the failure of the court to decide upon the applicant's proceedings was not "in accordance with the law" as required by Article 8 paragraph 2. Regarding the administrative proceedings initiated by the applicant, the Chamber noted that, in accordance with the Law on the Cessation of the Application of the Law on Use of Abandoned Property (the new Abandoned Property Law), the relevant authority is required to issue a decision on a request within thirty days of its receipt. The applicant filed her request in July 1999, but no decision had been issued. Accordingly, the actions of the Commission were not "in accordance with the law." Thus there was a violation of the right of the applicant to respect for her right to her home as guaranteed by Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to enable the applicant to regain possession of the first apartment and to pay the applicant KM 1,000 compensation for mental suffering.

*Decision adopted 7 February 2000*

*Decision delivered 9 March 2000*

|                          |   |
|--------------------------|---|
| <b>Cases Nos.:</b>       | CH/98/875, 939 and 951                                |
| <b>Applicants:</b>       | Radovan ŽIVKOVIĆ, Ilija SARIĆ and Dobrivoje JOVANOVIĆ |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina                  |
| <b>Date Delivered:</b>   | 12 May 2000   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are citizens of Bosnia and Herzegovina living in the territory of the Federation. They are former members of the 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, 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, which entered into force on 31 July 1998.

### Admissibility

Recalling *Sećerbegović, Biočlć and Oroz*, the Chamber concluded that it was competent *ratione personae* with regard to the Federation, but not the State. Noting that the situation complained of by the applicants was confirmed by the Federation Law on Pension and Disability Insurance, which entered into force on 31 July 1998, the Chamber found that it was competent *ratione temporis* to examine the application. Noting that the complaints concerned a situation that had lasted for nearly eight years and was still continuing, the Chamber found that the six-month time-limit was inapplicable in the applicants' cases. Finding that there was no domestic remedy the applicants could be required to pursue, the Chamber declared the applications admissible.

### Merits

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

Recalling its reasoning in *Sećerbegović, Biočlć and Oroz*, the Chamber found that the applicants had no claim to receive the full JNA pensions which could be regarded as a possession under Article 1 of Protocol No. 1.

#### *Discrimination*

The Chamber considered possible discrimination in the enjoyment of the right to social security protected by Article 9 of the ICESCR. Recalling its reasoning in *Sećerbegović, Biočlć and Oroz*, the Chamber found that the position of the applicants, and of the JNA pensioners in general, within the pension and social security system of the Federation was 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 of the applicants compared with the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation, the Chamber found that the difference in treatment was justifiable. Thus the Chamber concluded that the cases did not disclose discrimination against the applicants.

*Decision adopted 4 April 2000*

*Decision delivered 12 May 2000*

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|--------------------------|-------------------|
| <b>Case No.:</b>         | CH/98/892         |
| <b>Applicant:</b>        | Dževad MAHMUTOVIĆ |
| <b>Respondent Party:</b> | Republika Srpska  |
| <b>Date Delivered:</b>   | 8 October 1999    |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant, Mr. Dževad Mahmutović, is of Bosniak origin and lives in Prnjavor, the Republika Srpska. On 17 May 1998 the applicant's wife died. Two days later she was buried in the Muslim Town Cemetery, where the Mahmutović family owns a parcel and where all its members have been buried for decades. On 21 October 1994 the Municipality of Prnjavor had issued a decision according to which the Muslim Town Cemetery could no longer be used and the burial of all deceased Muslims would have to be performed at "the new town cemetery in the eastern part of the town." At the time of the Chamber's decision, this new cemetery did not yet exist. On 30 July 1998 the Prnjavor Municipality issued a decision ordering the applicant to conduct (at his own expense) the exhumation of his wife and to move her remains to the new town cemetery (which, in fact, did not yet exist). The applicant was also obliged to request the Municipal Sanitary Inspection for permission to exhume his wife. According to the same decision, an appeal could be filed within fifteen days, but it would not have suspensive effect. On 20 August 1998 the applicant filed an application for provisional measures with the Chamber, asking for an order permanently prohibiting the execution of the decision of the Prnjavor Municipality to exhume the remains of his wife from the Muslim Town Cemetery and to re-bury her at the new town cemetery. The applicant complained that the order to exhume his wife amounted to discrimination against him in the enjoyment of his right of freedom of religion on the grounds of religion and national origin.

### Admissibility

Recalling its decision in *Čegar* that the burden of proof is on a respondent Party arguing non-exhaustion of remedies to satisfy the Chamber that there was an effective remedy available to the applicant both in theory and in practice, the Chamber found that no effective remedy was available to the applicant in this case which could have afforded redress in respect of the breaches alleged, and declared the application admissible.

### Merits

#### *Discrimination*

The Chamber decided to consider possible discrimination in relation to Articles 8 and 9 of the Convention. As to Article 8, the Chamber stated that the authorities' action in ordering the exhumation of the applicant's wife from the family plot was so closely related to the private and family life of the applicant that it fell within the ambit of Article 8. As to Article 9, the Chamber noted that the applicant's wife was buried in the Muslim Cemetery in accordance with Muslim religious regulation and practice. Therefore, the Chamber found that such a burial fell within the scope of Article 9, insofar as this provision relates to freedom of religion including, in particular, freedom to manifest one's religion in practice and observance.

With reference to the Municipality's decision of 21 October 1994 providing for the closure of the Muslim Town Cemetery, the Chamber stated that, even if it was taken before the entry into force of the Dayton Peace Agreement, it remained in force after that date and, therefore, affected the applicant's rights since it formed the legal basis for the decision of 30 July 1998 ordering the exhumation of the applicant's wife. Moreover, the Chamber found the same decision discriminatory because it affected only the Muslim Cemetery and did not state any reason for the closure of the

cemetery. The Chamber noted that the respondent Party had not been able to indicate the reasons underlying the decision.

The Chamber noted that the respondent Party had not given any reasons as to why the applicant should have been required to exhume his wife beyond the fact that the cemetery had been closed. The Chamber found that the continued closure of the cemetery, under a decision taken in pursuance of a policy of ethnic cleansing, involved differential treatment of Muslims and could not be regarded as pursuing any legitimate aim. The Chamber, therefore, found discrimination against the applicant in the enjoyment of his rights to private and family life under Article 8 and his freedom of religion under Article 9.

### **Remedies**

The Chamber ordered the Republika Srpska to desist from any steps to remove the remains of the applicant's wife from their present place of burial, and to pay the applicant KM 1,000 in compensation for non-pecuniary damages.

### **Concurring Opinion**

Mr. Manfred Nowak attached a concurring opinion in which he argued that the steps ordered by the Chamber were not sufficient to remedy the discrimination against the applicant. He argued that the Chamber should have ordered the respondent Party to ensure that Muslims can be buried in Prnjavor and that the municipal authorities refrain from any further interference with burials of Muslims in Prnjavor. In addition, the authorities of the Republika Srpska should have been ordered to take the necessary measures against individuals responsible for the continuation of this policy of "ethnic cleansing against the deceased."

*Decision adopted 7 September 1999*

*Decision delivered 8 October 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/894        |
| <b>Applicant:</b>        | Dragan TOPIĆ     |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 5 November 1999  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a citizen of Bosnia and Herzegovina and the holder of an occupancy right over an apartment in Prijedor, the Republika Srpska. On 25 August 1994 the applicant was granted a permanent occupancy right over the apartment by the holder of the allocation right. On 9 April 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Prijedor ("Commission"), a department of the Ministry for Refugees and Displaced Persons ("Ministry"), declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within three days under threat of forcible eviction. On 19 August 1998 this decision was delivered to him. On 21 August 1998 the applicant appealed the decision. At the time of the Chamber's consideration, there had been no decision on this appeal, and the applicant remained in the apartment.

### Admissibility

Recalling *Onić*, and considering the non-suspensive effect of the appeal lodged by the applicant and the size of the fee he would have had to pay to initiate an administrative dispute before the Supreme Court, the Chamber concluded that no effective domestic remedy was available to the applicant, and declared the case admissible.

### Merits

#### *Article 8 of the Convention*

Noting that the Law on the Use of Abandoned Property requires a property to be entered into the records of abandoned property before it can be allocated to a person, but that the respondent Party provided no evidence that any such entry was made in respect of the apartment in the present case, the Chamber found that the attempts of the Commission to get the applicant to vacate the apartment could not be considered to have been "in accordance with the law" within the meaning of Article 8 paragraph 2. Thus there was a violation of Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found a violation of the applicant's rights as protected by Article 1 of Protocol No. 1.

### Remedies

The Chamber ordered the Republika Srpska to take all necessary steps to revoke the decision of the Commission and to allow the applicant to enjoy undisturbed occupancy of the apartment in accordance with the terms of the new Abandoned Property Law.

*Decision adopted 8 October 1999*

*Decision delivered 5 November 1999*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/896                            |
| <b>Applicant:</b>        | Mirko ČVOKIĆ                         |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 June 2000                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serb descent, resident in Banja Luka. On 1 June 1996, he drove to Glamoč to view his pre-war home. Finding it destroyed, he left. Just outside Glamoč, he was stopped and arrested by Bosnian Croat police officers together with Mr. Krstan Čegar, who was the applicant in case no. CH/96/21. Until 3 June 1996 he was detained in a prison in Glamoč, when he was transferred to a prison in Livno. On 11 June 1996 he was transferred to the Rodoč military prison near Mostar. The applicant claimed that certain items of personal property were taken from him upon his arrest and never returned to him. While in detention he was told that he was being detained for the purposes of exchange for prisoners of Croat origin held by the authorities of the Republika Srpska. He was also subjected to verbal abuse, including being called a “Četnik” and being told that he should be killed because of his Serb origin. He was also forced to perform hard labour, including unloading and moving heavy materials, and the food rations he was given were rare and of poor quality. For the entire duration of his detention—46 days—he was not allowed access to clean underwear. On 16 July 1996, the applicant was released. The applicant was never given any information concerning the reasons for his arrest and detention, other than that he was being held for the purposes of exchange. He was not brought before a judge or other officer exercising judicial power at any time during his detention.

### **Admissibility**

The Chamber found that there was no effective remedy available to the applicant which could remedy the matters he complained of. As for the six-month rule, the Chamber noted that the applicant had been hospitalised between 19 December 1996 and 28 January 1997 and again between 6 February and 3 March 1997. In these circumstances the Chamber accepted as justified the reasons provided by the applicant for the delay in filing an application with the Chamber and declared his application admissible.

### **Merits**

#### *Article 3 of the Convention*

The Chamber considered that to be subjected to threats, to be kept in a period of prolonged uncertainty concerning one’s fate, and to be deprived of proper food and access to clean clothes constituted inhuman and degrading treatment in violation of the guarantees provided by Article 3.

#### *Article 4 of the Convention*

The Chamber found that the work exacted from the applicant during his detention constituted a violation of the right not to be subjected to forced or compulsory labour contained in Article 4.

#### *Article 5 of the Convention*

As in Čegar, the Chamber found that the applicant was arrested and detained by agents of the respondent Party for the sole purpose of exchanging him for prisoners held by others. Thus the arrest and detention was arbitrary and contrary to Article 5 paragraph 1. Noting that no legal grounds for his detention were given to him at any stage during his detention, the Chamber found that there was a

violation of Article 5 paragraph 2. As in *Čegar*, the Chamber found that no remedy at all was available to the applicant during his detention and that therefore his right of review of his detention under Article 5 paragraph 4 was violated. Finally, the Chamber referred to *H.R. and Momani* and found that it was not established that the formal right to compensation provided for by the Law on Criminal Procedure was in fact enforceable, and thus that there was a violation of Article 5 paragraph 5.

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

Noting that the applicant specified in detail the items allegedly taken from him, and that there was no indication that the applicant was other than truthful in listing them, the Chamber could find no justification for what amounted to the theft of the applicant's property by agents of the Federation and therefore found a violation of Article 1 of Protocol No. 1.

*Discrimination*

The Chamber found that the applicant was detained and verbally abused because of his Serb origin. Thus the applicant underwent differential treatment solely on the basis of his national origin, which extended also to the inhuman and degrading treatment as well as the forcing of the applicant to perform labour and to the taking of his personal belongings. The Chamber could find no reasonable or objective justification for this differential treatment and therefore found that the applicant had been discriminated against in the enjoyment of his rights as guaranteed by Articles 3, 4 and 5 of the Convention and by Article 1 of Protocol No. 1 to the Convention.

**Remedies**

The Chamber ordered the Federation to pay to the applicant KM 5,000 by way of compensation for moral damage and KM 1,310 by way of compensation for pecuniary damage.

**Dissenting Opinion**

Mr. Mehmed Deković attached a dissenting opinion in which he argued that the application should have been declared inadmissible for failure to comply with the six-month rule.

*Decision adopted 10 May 2000*

*Decision delivered 9 June 2000*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the application should have been declared inadmissible for non-compliance with the six-month rule, and disputed the compensation awarded. The Chamber found that the request did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As it did not satisfy the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

Mr. Jakob Möller attached a dissenting opinion in which he argued that the request for review did meet the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure and should have been accepted. A review of the contested decision would have given the Chamber an opportunity further to elucidate, in general, its interpretation and application of the six-month rule and, in particular, to test whether the Chamber's discretionary power was properly applied.

*Decision adopted 8 September 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/916                            |
| <b>Applicant:</b>        | Nebojša TOMIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 January 2002                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicant was the pre-war occupancy right holder to an apartment in Tuzla, the Federation of Bosnia and Herzegovina. In 1992 he left the country for a brief trip, and was unable to return to his home due to the hostilities. In 1993 the local authorities in Tuzla re-allocated the applicant's apartment pursuant to the Law on Abandoned Apartments (old Abandoned Apartments Law). In August 1998 the applicant submitted a request to the Department for Housing and Public Affairs in Tuzla under the new Abandoned Apartments Law to regain possession of his apartment. Receiving no response, the applicant filed an appeal to the Ministry for Physical Planning and Environment in Tuzla in August 1999. In August 2001 the Department for Housing finally confirmed the applicant's occupancy right, but has not enforced that decision despite the applicant's subsequent request that it do so.

### **Admissibility**

Observing that domestic remedies to be exhausted have to be effective in practice and not just available on paper, the Chamber noted that domestic courts reviewed the applicant's claim for three years and failed to enforce it within court-set time limits, without providing any justification. The Chamber thus held that the applicant exhausted all effective remedies. The Chamber then ruled that the six-month rule was inapplicable, since the violation alleged was the continuous failure of the respondent Parties to review the applicant's case. The Chamber found the applicant's claims admissible, with the exception of the discrimination claim, which was inadmissible as manifestly ill-founded.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that a three-year delay in deciding the applicant's urgent and simple case and the unjustified failure to promptly enforce the belated decision in his favour were not "according to the law" within the meaning of Article 8 and thus a violation of that Article.

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

The Chamber confirmed its prior ruling that occupancy right of a state-owned apartment was a "possession" within the meaning of Article 1, Protocol 1 to the Convention and that re-allocation of occupancy rights could be an tantamount to expropriation in violation of that Article. The Chamber held that the applicant's right to peacefully enjoy his possession guaranteed by Article 1 of Protocol 1 had been violated.

#### *Article 6 of the Convention*

The Chamber found that Article 6 was applicable to the case, since the adjudication of the occupancy rights was a determination of "civil rights" within the meaning of Article 6. The Chamber observed that a speedy outcome was particularly important where an applicant was seeking to be reinstated in his apartment, that the case was not complex, that the delay was due to the respondent Party's

actions, not the applicants. In light of these factors, the Chamber held that the domestic proceedings were not expedited with reasonable speed in violation of Article 6 paragraph 1.

### **Remedies**

The Chamber ordered the respondent Party to reinstate the applicant into his apartment without further delay, and, at the latest, by 11 February 2002. The Chamber also ordered the respondent Party to pay the applicant KM 3,000 on account of non-pecuniary damages for the loss of the use of his apartment, 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.

*Decision adopted 8 January 2002*

*Decision delivered 11 January 2002*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it sought a review of the Chamber's decision to award monetary compensation. It further argued that the Second Panel had failed to establish a causal link between failure of bodies of the respondent Party to return the applicant into possession of his apartment and possible non-pecuniary damage. In addition, as the applicant was reinstated into his pre-war apartment on 28 January 2002, the respondent Party asked the case to be struck out of the Chamber's list of cases. The Chamber stated that the award of compensation was in accordance with the plenary Chamber's case-law and was based on adequate grounds. Furthermore the Chamber found that the fact that the applicant was reinstated into his pre-war apartment could be considered as partial compliance with the Chamber's decision and not as a reason which could justify review of the decision or striking the case out of the Chamber's list of cases. Therefore, the Chamber was of the opinion that the request for review did not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required by Rule 64 paragraph 2(a) of its Rules of Procedure and decided to reject the request for review.

*Decision adopted 8 March 2002*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/934                            |
| <b>Applicant:</b>        | Edin GARAPLIJA                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 July 2000                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

Mr. Garaplija, a citizen of Bosnia and Herzegovina of Bosniak descent, was a police officer with the Bosnian State Security Service, the Agency for Investigation and Documentation. On 13 June 1997 he was convicted by the Sarajevo Cantonal Court of abduction and attempted murder, and sentenced to 13 years of imprisonment. This judgment was confirmed on appeal by the Supreme Court of the Federation on 26 May 1998. The applicant complained that his trial was unfair and that he should have been granted a pardon.

### **Admissibility**

The Chamber declared inadmissible as incompatible *ratione materiae* the claim of the applicant that he was entitled to a pardon, as the Human Rights Agreement contains no such right. The Chamber declared the application admissible with respect to the claim that the applicant did not receive a fair trial.

### **Merits**

#### *Article 6 of the Convention*

The Chamber first examined whether the right of the applicant to defend himself in person or through legal assistance, as guaranteed by Article 6 paragraph 3(c), had been violated. It concluded that it had not, as the applicant did not raise these issues during the proceedings before the domestic courts. In addition, the Chamber did not find it established that it was not open to the applicant to revoke the authorisation of his representative in those proceedings.

The Chamber then examined whether the fact that the applicant was not present during the appellate proceedings before the Supreme Court deprived him of a fair hearing. It recalled that the presence of the defendant is a requirement of the guarantee of the right to a fair trial contained in Article 6 paragraph 1 and paragraph 3(c). The Chamber examined the jurisdiction of the Supreme Court, and held that as it examined questions of both law and fact, the guarantees required by Article 6 paragraph 1 and paragraph 3(c) applied to the proceedings before the Supreme Court. The applicant claimed that he was not allowed to attend the hearing, while the Federation claimed that he would have been allowed to, but he would have been required to pay for the costs of his attendance. The Chamber concluded that the right of the applicant to be present during the appellate proceedings was not respected and thus that his rights under Article 6 had been violated.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to grant the applicant renewed appellate proceedings, should he lodge a petition to that effect.

*Decision adopted 3 July 2000*  
*Decision delivered 6 July 2000*

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|--------------------------|-------------------|
| <b>Case No.:</b>         | CH/98/935         |
| <b>Applicant:</b>        | Mirko GLIGIĆ      |
| <b>Respondent Party:</b> | Republika Srpska  |
| <b>Date Delivered:</b>   | 10 September 1999 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina and the holder of an occupancy right over an apartment in Prijedor, the Republika Srpska. On 25 August 1995, the applicant was granted a permanent occupancy right over the apartment by the holder of the allocation right. On 8 May 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property, a department of the Ministry for Refugees and Displaced Persons, declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within three days under threat of forcible eviction. On 15 May 1998 the applicant appealed this decision. At the time of the Chamber's consideration, there had been no decision on this appeal and the applicant still occupied the apartment.

### **Admissibility**

Given the non-suspensive effect of the appeal lodged by the applicant and the size of the fee he would have had to pay to initiate an administrative dispute before the Supreme Court, the Chamber found that there was no effective remedy available to the applicant and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

Noting that the Law on the Use of Abandoned Property (the old Abandoned Property Law) requires a property to be entered into the minutes of abandoned property before it can be allocated to a person and that no such entry was made in respect of the apartment in the present case, the Chamber found that the attempts of the Commission for the Accommodation of Refugees and Administration of Abandoned Property to get the applicant to vacate the apartment cannot be considered to have been "in accordance with the law" within the meaning of Article 8 paragraph 2. Thus there was a violation of Article 8.

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

Having found that the decision ordering the applicant's eviction from the apartment was not in accordance with the law, the Chamber found that the interference with the applicant's right to peaceful enjoyment of his possessions was not "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1. Thus there was a violation of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property and to allow the applicant to enjoy undisturbed occupancy of the apartment in accordance with the terms of the new Abandoned Property Law.

*Decision adopted 7 July 1999*

*Decision delivered 10 September 1999*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/946                            |
| <b>Applicants:</b>       | H.R. and Mohamed MOMANI              |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 5 November 1999                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

H.R. is a citizen of Arab descent of both Bosnia and Herzegovina and Jordan. Mohamed Momani is a Palestinian citizen of Palestinian descent. Bosnian Croat police arrested them on 10 February 1996 at Kreševo, the Federation, and detained them together with Samy Hermas, who was the applicant in case no. CH/97/45. On 27 June 1996 the applicants were brought before a judge and allowed to meet their lawyer for the first time. By a decision taken that day their continued detention was ordered due to their being suspected of having committed war crimes and other criminal offenses. The Office for the Exchange of Prisoners and Other Persons of Hrvatska Republika Herceg-Bosna made numerous attempts to have the applicants exchanged. The applicants were finally exchanged for Bosnian Croat prisoners of war on 7 August 1996.

### **Admissibility**

Noting that the respondent Party made no submissions on the admissibility of the case and finding no apparent grounds that would justify declaring the application inadmissible, the Chamber declared the application admissible in its entirety.

### **Merits**

#### *Article 3 of the Convention*

The Chamber found that the physical violence committed on the applicants while they were in captivity and thus at the mercy of their captors constituted inhuman and degrading treatment. In the Chamber's opinion, the same applied to the fact that the applicants were being kept in a state of prolonged uncertainty as to their eventual fates, which was further aggravated by threats of death and grievous injury. Thus the Chamber found a violation of Article 3.

#### *Article 4 of the Convention*

The Chamber found that the applicants, who were detained against their will, did not offer themselves voluntarily for the work they were required to perform while in detention. The Chamber accepted that the applicants could reasonably have believed that they were under threat of violence against their persons had they refused. In this regard the Chamber noted that they had already been physically assaulted and were entirely at the mercy of the persons keeping them in detention. It therefore accepted that the work exacted from the applicants amounted to "forced or compulsory labour," which constituted a violation of Article 4.

#### *Article 5 paragraph 1 of the Convention*

The Chamber found that the applicants were arrested and detained by agents of the respondent Party for the sole purpose of exchanging them for prisoners held by others. Although the Chamber did not distinguish the period after 27 June 1996 from the preceding period, it noted that insofar as the reason for the detention of the applicants as from that date was the suspicion that they had committed war crimes, the Rules of the Road, which are directly applicable in the legal system of Bosnia and Herzegovina, required that the relevant order, warrant or indictment be reviewed beforehand by the ICTY. That requirement was not complied with in this respect. The deprivation of

liberty was inconsistent with Article 5 paragraph 1, and thus the Chamber concluded that Article 5 paragraph 1 had been violated.

*Article 5 paragraph 2 of the Convention*

Although it appeared that the detention of the applicants was for the purpose of prisoner exchange and that they were so informed in May 1996 by the commanding officer of the military prison where they were detained, no legal grounds were given. In these circumstances the Chamber took the view that the date on which the applicants were informed of the reasons for their arrest and of any charge against them was 27 June 1996. That was the date on which the investigative judge gave them the information which enabled them to initiate proceedings to challenge the lawfulness of their detention. The Chamber therefore found that a delay of some four-and-one-half months in providing such essential information could not in any circumstances be considered compatible with Article 5 paragraph 2, and that there had been a violation of Article 5 paragraph 2.

*Article 5 paragraph 4 of the Convention*

The Chamber found that no remedy at all was available to the applicants until 27 June 1996. This was in itself sufficient to find that there had been a violation of Article 5 paragraph 4. It should be noted that, although it appears that a judicial remedy became available to the applicants on 27 June 1996 (of which the applicants did not avail themselves), no argument had been made by the respondent Party that this remedy met the requirements of Article 5 paragraph 4. Thus the Chamber found a violation of Article 5 paragraph 4.

*Article 5 paragraph 5 of the Convention*

The Chamber found that, although the law of the Federation provides for a right to compensation in relation to illegal detention, it was not established that it met Convention standards. Thus the Chamber found a violation of Article 5 paragraph 5.

*Article 13 of the Convention*

Given the absolute nature of the prohibition enshrined in Article 3, the Chamber found that it applies equally to forms of inhuman or degrading treatment short of torture. Whether or not it would have been open to the applicants to take civil proceedings against the respondent Party or a subordinate authority with a view to obtaining compensation, the Chamber was not convinced that a remedy involving a "thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure" was in fact available. The Chamber noted that the public prosecutor failed to make use of his powers to carry out any investigations directed against the applicants' captors. In conclusion, Article 13 had been violated in that there was no "effective remedy" available to the applicants with regard to the violation of Article 3.

*Discrimination*

The Chamber found that the applicants were detained for no other reason than for prisoner exchange. During their detention, they were subjected to ill-treatment and forced labour due to their religion and national origin. Since no objective and reasonable justification is conceivable for such treatment, the Chamber concluded that the applicants were discriminated against in the enjoyment of their rights under Articles 3, 4, and 5 of the Convention.

**Remedies**

The Chamber ordered the Federation to carry out a thorough and effective investigation of the arrest, ill-treatment and forced labour of the applicants, to identify those responsible, to bring the perpetrators to justice and to provide effective access for the applicants to the investigatory procedure. The Chamber

*Case No. CH/98/946*

ordered the Federation to pay Mr. Momani KM 11,500 and H.R. KM 12,500 by way of compensation for pecuniary and non-pecuniary injury.

*Decision adopted 6 October 1999*

*Decision delivered 5 November 1999*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/948                            |
| <b>Applicant:</b>        | Mile MITROVIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 September 2002                     |

## DECISIONS ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina of mixed Croat and Serb origin. He was an employee of Elektroprivreda, a socially owned company in Sarajevo, prior to the outbreak of the armed conflict. During the conflict, he was a Commander of a Civil Defence Unit in the Republika Sprska. On 30 March 1996, after the end of the armed conflict, the applicant reported to work. On that day, he was informed that his employment had been terminated, by a decision of his employer of 30 October 1993, on the ground that, without valid justification, he had not reported to work for five consecutive days. The applicant sought legal redress to regain his position, but his civil action has been rejected by the Court of First Instance in Sarajevo on the ground that he was engaged on the side of the aggressor against the Republic of Bosnia and Herzegovina during the armed conflict.

### Admissibility (7 September 1999)

The Chamber noted that the applicant's complaints related partially to events that occurred before 14 December 1995, when the Agreement entered into force. Accordingly, the Chamber declared inadmissible as incompatible *ratione temporis* with the Agreement the parts of the application that related to events that occurred before 14 December 1995.

The respondent Party objected to the admissibility of the application on the ground of non-exhaustion of domestic remedies in that the applicant could have requested review by the Supreme Court. The Chamber held that such a remedy would be considered an extra-ordinary remedy and recalled that, as a general rule, an application for retrial or similar extraordinary remedies cannot be taken into account when considering whether domestic remedies have been exhausted. Additionally, the Chamber noted that in practice, the Supreme Court has granted this extraordinary review only in a very small number of cases. Accordingly, the Chamber held that there was very little prospect that a request for review would be an effective remedy and therefore the applicant did not have to avail himself of this remedy.

### Dissenting Opinions

Mme. Michèle Picard, joined by Messrs., Jakob Möller and Andrew Grotrian disagreed with the majority that an application to the Supreme Court does not have to be exhausted under the case-law of the Strasbourg institutions because it is an "extraordinary remedy". They argued that the Strasbourg case-law is more subtle. It disregards the legal qualification of the remedy given by domestic law and examines the precise characteristics of the remedy case by case to determine whether it is effective for the purposes of the Convention. In the present case an application for review permitted the Supreme Court to examine whether the substantive law has been wrongly applied. The dispute between the applicant and the company was clearly related to the substantive law of the Federation. The second basis of the reasoning of the majority is that in practice the Supreme Court has granted the remedy in question only in a very small number of cases. However, the Supreme Court could have reviewed the application of the law by the lower courts. There was no factual material before the Chamber to suggest that it would not have done so in practice. In these circumstances there was no reason to suppose that this *prima facie* effective remedy was not effective in practice.

## **Merits**

*Discrimination in the enjoyment of the right to work and free choice of employment and the right to fair hearing, as guaranteed by Article 6 of the ICESCR and Article 6 of the Convention*

The Chamber held that the acts complained of constituted an interference with the applicant's rights under either Article 6(1) of the ICESCR or Article 6 of the Convention, as well as a potential failure of the Federation to secure protection of those rights.

The Chamber noted that the employer's decision to terminate the applicant's contract was based on his unjustified absence from work for five consecutive days under the Law on Fundamental Rights in Working Relations. However, the Chamber also notes that the company did not take into account the fact that the applicant lived on the other side of the frontline and consequently failed to apply Article 10 of the Law on Working Relations.

Regarding the judicial decisions, the Chamber considered that the domestic courts exceeded their competence as the proceedings submitted before them only concerned the legality of the decision on termination of employment. The proceedings did not permit any re-qualification of the grounds underlying the decision. However, the courts refused the applicant's claim under Article 10 of the Law on Working Relations and decided that the termination of the contract was, in any case, justified due to the participation of the applicant in the conflict on "the side of the aggressor". The Chamber found that the conduct of the courts revealed their intent to solidify the termination of the applicant's employment, instead of deciding the issue before them. Moreover, as the ground for the applicant's termination relied on by the courts in practice applied almost exclusively to persons of non-Bosniak origin, the Chamber concluded that this finding was discriminatory on grounds of national and ethnic origin.

The Chamber found it established that the applicant had been subjected to differential treatment due to his national and ethnic origin. No legitimate aims had been put forward to justify this differential treatment. It therefore constituted discrimination in relation to both the enjoyment of the right to work, and the enjoyment of the right to a fair hearing.

*Article 13 of the Convention and Article 5(e)(i) of the CERD*

The Chamber held, considering its finding that the applicant had been discriminated against in the enjoyment of his rights protected by Article 6 of the Convention and Article 6 of the ICESCR, decided that it was not necessary for it separately to examine the case under Article 13 of the Convention and with respect to discrimination in the enjoyment of the rights protected by Article 5(e)(i) of the CERD

## **Remedies**

The Chamber ordered the Federation to undertake immediate steps to ensure that the applicant is no longer discriminated against in his right to work and to just and favourable conditions of work, and that he be offered the possibility of resuming his work on terms appropriate to his former position and equal to those enjoyed by other employees.

The Chamber further ordered the Federation to pay to the applicant, by way of compensation, a lump sum of 10,000 KM, covering both non-pecuniary and pecuniary damage, including the lost salaries and contributions. Additionally, the applicant would also receive at the end of each month 20 KM for each day until he is offered the possibility to resume his work on terms compatible with his former position and equally enjoyed by others.

## **Dissenting Opinions**

Mr. Hasan Balić argued that in order to successfully defend itself under international and national laws, a country under attack is obliged to organise its own defence, and in accordance with the

United Nations Charter, to call upon other countries for help. Bosnia and Herzegovina acted in this way. It issued a Decree, which later became the Law on Working Relations, and its Article 15 provides for the compulsory termination of employment for an employee who took the side of the aggressor against the Republic of Bosnia and Herzegovina. It is not disputed that this condition was fulfilled. Another possibility to terminate employment was an unjustified absence from work for 5 working days. The judicial organs in the Federation of Bosnia and Herzegovina had this in mind while deciding on the applicant's employment in question and rejecting his request.

Mr. Balić found that upon carefully analysing the decisions of the national courts, the period of issuance of those decisions, and the respect given to procedures set forth in national regulations, then the Chamber's decision raises doubts and thereby calls into question the conclusions of the decision, with which he did not agree.

In a separate dissenting opinion, Mr. Deković argued that the Chamber had erred in concluding that the applicant was discriminated against in the enjoyment of his right to work and to a fair hearing, as such a finding was not based on the law and it does not give acceptable reasons. The question raised was whether the applicant had been discriminated against due to his national and ethnic origin. This was a fundamental issue, which should have been thoroughly discussed in the decision, but it has not been. Mr. Deković argued that it is generally known that, during the war, in situations where the legal requirements of Article 15 of the Law on Working Relations had been fulfilled, companies, and among them the applicant's company, issued procedural decisions terminating working relations regardless of the national or ethnic origin of the workers. In the concrete case, the applicant had been absent from work without any valid justification, and besides that, he, as the Commander of Civil Defence, held the status of a member of the armed forces of the Republika Srpska. Therefore, It appears that the procedural decision of his company terminating his working relations, as well as the decisions of the domestic courts, are valid and based on the law. The right of the applicant to a fair hearing has not been violated since the proceedings before the regular courts were completed in a proper time period and in accordance with regulations applicable when the applicant's working relations were terminated.

Mr. Deković also believed that the applicant had failed to avail himself of the legal remedy provided under Article 143a of the Law on Labor. Whilst it is true that the applicant had used this legal remedy, it had not been exhausted since the decision of the competent Cantonal Commission had not been issued. The Chamber neglected this fact, and it did not provide reasons why the stated objection was not accepted, although it is important for the issuance of a correct decision.

*Decision on admissibility adopted 7 September 1999*

*Decision on the merits adopted 2 September 2002*

*Decision delivered 6 September 2002*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/958        |
| <b>Applicant:</b>        | Mara BERIC       |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 10 December 1999 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is the occupant of an apartment in Prijedor, the Republika Srpska. On 28 September 1992 she was granted the occupancy right by the holder of the allocation right over the apartment. On 30 April 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Prijedor, a department of the Ministry for Refugees and Displaced Persons, declared the applicant to be an illegal occupant of the apartment and ordered her to vacate it within three days under threat of forcible eviction. On 12 September 1998 the applicant received this decision and on 14 September 1998 she appealed it. At the time of the Chamber's consideration, there had been no decision on this appeal, and the applicant still occupied the apartment.

### **Admissibility**

Given the non-suspensive effect of the appeal lodged by the applicant and the size of the fee she would have had to pay to initiate an administrative dispute before the Supreme Court, the Chamber found that there was no effective remedy available to the applicant and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

Noting that the Law on the Use of Abandoned Property requires a property to be entered into the minutes of abandoned property before it can be allocated to a person and that no such entry was made in respect of the apartment in the present case, the Chamber found that the attempts of the Commission for the Accommodation of Refugees and Administration of Abandoned Property to get the applicant to vacate the apartment cannot be considered to have been "in accordance with the law" within the meaning of Article 8 paragraph 2. Thus there was a violation of Article 8.

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

Having found that the decision ordering the applicant's eviction from the apartment was not in accordance with the law, the Chamber found that the interference with the applicant's right to peaceful enjoyment of his possessions was not "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1. Thus there was a violation of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property and to allow the applicant to enjoy undisturbed occupancy of the apartment in accordance with the terms of the new Abandoned Property Law.

*Decision adopted 4 November 1999*

*Decision delivered 10 December 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/1018                           |
| <b>Applicant:</b>        | Zoran POGARČIĆ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 April 2001                         |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is a 62 year-old man of Croat national origin. He is a mechanical engineer who taught at the School of Electrical Engineering in Sarajevo for almost thirty years. The applicant was unable to continue working at the School of Electrical Engineering on or around 31 May 1992 when the war hostilities made it impossible for him to get to work. He was living in the suburb of Grbavica, which was then held by Bosnian Serb forces. At the end of the hostilities, the applicant reported to the School of Electrical Engineering and requested reinstatement. He was not reinstated. On 13 September 1996 the Labour Inspector issued a procedural decision finding that the School of Electrical Engineering had violated the applicant's rights under domestic labour law and ordering the School of Electrical Engineering to resolve the applicant's labour status. In accordance with the order of the Labour Inspector, on 25 October 1996, the School of Electrical Engineering issued a procedural decision authorising the applicant's leave without pay from 30 April 1992 until 10 June 1996 and placing him on a waiting list thereafter. The stated reason for putting him on the waiting list was that there were not enough classes for him to teach and that he was not qualified. The applicant appealed the 25 October 1996 decision, but the School of Electrical Engineering did not respond. On 24 December 1996 the applicant submitted a complaint to the Court of First Instance II in Sarajevo challenging the 25 October 1996 decision. At the time of the Chamber's consideration, the proceedings remained pending.

### Admissibility

Noting that the applicant was not required to initiate any further proceedings under domestic labour law, the Chamber found that there was no additional remedy available to the applicant that he should be required to exhaust. Noting that the applicant's grievances related to a situation that took place after the Dayton Peace Agreement entered into force, the Chamber found that it was competent *ratione temporis* to examine the case insofar as it related to events that occurred after 14 December 1995. Thus the Chamber declared the case admissible.

### Merits

#### *Discrimination*

The Chamber considered possible discrimination against the applicant in the enjoyment of the rights and freedoms provided for in ICESCR and the CERD. The Chamber noted the following facts: of the 43 persons fired by the School of Electrical Engineering in 1992 on the purported grounds of "unjustified absence and failure to carry out their work for 20 days," 26 were of Serb origin, 12 were of Croat origin, and 5 were of Bosniak origin. Of those 43 persons, only one person was re-employed and that person was of Bosniak origin. Thus the firing had a disparate impact on persons of non-Bosniak origin and resulted in the differential treatment of non-Bosniaks subsequent to 14 December 1995 because the majority of employees who were required to reapply for their jobs after the war ended were non-Bosniaks. Noting that the respondent Party provided no credible reason for placing the applicant on the waiting list, the Chamber concluded that there had been discriminatory treatment of the applicant based on his Croat origin. Thus the applicant had been discriminated against on the ground of national and ethnic origin in his enjoyment of the right to work under Article 6 of the ICESCR and his right to protection against unemployment under Article 5 of the CERD.

*Article 6 of the Convention*

The Chamber found that the case did not involve issues of a particularly complex nature; that the respondent Party provided no explanation from which it would appear that the delays of the applicant's proceedings could not be imputed to the judicial authorities and the respondent Party itself; and that it could not be found that the applicant had contributed to the delay. Noting that an employee who considers that his working relationship was wrongly terminated has an important personal interest in a speedy outcome of the dispute and in securing a judicial decision on the lawfulness of this measure considering that his very livelihood depends on it, the Chamber found that there was a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1.

**Remedies**

The Chamber ordered the Federation to pay the applicant KM 24,600 by way of compensation for lost income and unpaid contributions; to undertake immediate steps to ensure that the applicant was no longer discriminated against in his right to work, and that he was offered the possibility of resuming his work or a fair and just retirement on terms equal with those enjoyed by other employees and commensurate with his qualifications as a teacher; and to pay him KM 500 per month for each month the applicant continued not to be reinstated into his employment or until another settlement between the Parties was reached.

*Decision adopted 3 April 2001*

*Decision delivered 6 April 2001*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it contested the finding that the applicant adequately exhausted domestic remedies and contested the finding of discrimination pursuant to Article 6 of the ICESCR and Article 5(e)(i) of the CERD, and the award of compensation. The Chamber found that the claim of non-exhaustion had previously been examined and was rejected on adequate grounds. It was also of the opinion that the original decision did not appear to contain an incorrect assessment of the facts and was based on adequate grounds. Further, the Chamber noted that the party seeking review was barred, in its request for review, from raising new factual allegations. Accordingly the Chamber stated that the request for review involved neither a serious question affecting the interpretation or application of the agreement nor a serious issue of general importance. In addition, the Chamber noted that it could not be said that the whole circumstances justify reviewing the original decision. Therefore, the Chamber decided to reject the request for review.

*Decision adopted 7 September 2001*

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|--------------------------|-----------------------------|
| <b>Case No.:</b>         | CH/98/1019                  |
| <b>Applicants:</b>       | Sp.L., J.L., Sv.L. and A.L. |
| <b>Respondent Party:</b> | Republika Srpska            |
| <b>Date Delivered:</b>   | 6 April 2001                |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicants are citizens of Bosnia and Herzegovina. Applicants Sp.L., his wife "J.L." and his two sons "Sv.L." and "A.L." are the holders of savings accounts with Kristal Banka AD, Banja Luka, Branch Office Doboj. In 1992 the applicants initiated proceedings before the Municipal Court in Doboj seeking disbursement of their savings and compensation for loss of profit due to their inability to withdraw their savings from the Kristal Banka. J.L., Sv.L. and A.L. were represented by the applicant Sp.L. in the proceedings before the Chamber and were represented by him in all domestic proceedings. In 1993 the Court of First Instance in Doboj ordered the Kristal Banka to pay to the applicants the sums they had on deposit with it. This decision entered into force and the applicants sought execution of the decision, but without success.

### **Admissibility**

Finding that the remedies available had not proved effective in practice, and thus that the applicants had exhausted the remedies available to them, the Chamber declared the case admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber found that it was due to the conduct of relevant national authorities that the proceedings were unnecessarily prolonged. Since the length of the proceedings must be imputed to the authorities of the Republika Srpska, there was a violation of Article 6.

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

The Chamber found that the applicants' deposits with the Kristal Banka constituted "possessions" within the meaning of Article 1 of Protocol No. 1. Noting that in the proceedings before it, no convincing reason was put forward as to why the decision of the Court of First Instance in Doboj should not be enforced, the Chamber found that the respondent Party had failed effectively to secure the applicants' rights to peaceful enjoyment of their possessions. Thus, there was a breach of their rights as guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska to ensure the full enforcement of the decision of the Court of First Instance in Doboj in the applicants' proceedings against the Kristal Banka.

*Decision adopted 3 April 2001*

*Decision delivered 6 April 2001*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Cases Nos.:</b>       | CH/98/1027 and CH/99/1842            |
| <b>Applicants:</b>       | R.G. and Predrag MATKOVIĆ            |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 June 2000                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The cases concern the allegations of the applicants, one a citizen of Bosnia and Herzegovina and the other a citizen of Yugoslavia, both of Serb origin, that on 6 September 1996, while driving in the Federation near Sarajevo, they were shot at and detained without any legal basis until 30 October 1996 by soldiers of the Army of Bosnia and Herzegovina. R.G. claims that he suffered serious gunshot wounds, that he was treated in hospital under a false name and that after his release from hospital on 23 September 1996 he was detained by the Army of Bosnia and Herzegovina. Mr. Matković claims that he was detained by the Army of Bosnia and Herzegovina until 15 October 1996. On 14 October 1996 an investigation was opened against the applicants on suspicion that they had committed war crimes. On 15 October 1996, they were brought before a judge who ordered their detention in the Central Prison in Sarajevo. On 30 October 1996 the then Higher Court in Sarajevo ordered their release from detention and they were released that day.

### **Admissibility**

Noting that the Human Rights Agreement does not limit by nationality the categories of persons who may lodge applications with the Chamber, the Chamber found that both claims were compatible *ratione personae*. The Chamber also found that the domestic remedy available to the applicants in the legal system of the Federation offered no prospect of success and therefore they could not be required to exhaust it. Thus the Chamber declared the applications admissible.

### **Merits**

#### *Article 3 of the Convention*

The Chamber found that the treatment of the applicants during their arrest and detention constituted a violation of their rights to freedom from inhuman and degrading treatment and punishment under Article 3. In the case of R.G., the Chamber found that the treatment he suffered constituted torture, in violation of the same provision.

#### *Article 5 of the Convention*

As the charges against the applicants were fabricated, and their detention was not in accordance with the Rules of the Road, the Chamber found a violation of Article 5 paragraph 1. As it had received no evidence that the applicants were informed of the reasons for their arrest until 15 October 1996, the Chamber found a violation of Article 5 paragraph 2. As until 15 October 1996 the applicants had no remedy at all available to them, the Chamber found a violation of Article 5 paragraph 4. As the legal system of the Federation contained no right to compensation for unlawful detention at the time of the applicants' release from detention, the Chamber found a violation of Article 5 paragraph 5. Thus the applicants' detention constituted a violation of their rights to liberty and security of person as guaranteed by Article 5.

*Discrimination*

The Chamber recalled *Hermas* and found that the arrest and detention of persons on the basis of their belonging to a specific category of persons, and their subjection to abusive language and treatment on the basis of their religion and national origin, constitute differential treatment for which there is no possible justification. Thus the Chamber found that both applicants had been discriminated against on the grounds of their religion and national origin in the enjoyment of their rights under Articles 3 and 5 of the Convention.

**Remedies**

The Chamber ordered the Federation to pay R.G. KM 25,000 and Mr. Matković KM 10,000 as compensation for moral damage.

*Decision adopted 12 May 2000*

*Decision delivered 9 June 2000*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the applicants had violated the six-month rule, that the applicants did not suffer any violations of their rights as protected by the Convention, that the applicants had effective domestic remedies available to them which they did not exhaust, and that the remedies ordered against the Federation were inappropriate. The Chamber found that the respondent Party's request for review contained arguments that were substantively identical to those raised during the proceedings before the First Panel, and that the request did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As the request did not meet either of the two conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 8 September 2000*

|                          |   |
|--------------------------|---|
| <b>Case No.:</b>         | CH/98/1062                                  |
| <b>Applicant:</b>        | Islamic Community in Bosnia and Herzegovina |
| <b>Respondent Party:</b> | Republika Srpska                            |
| <b>Other Title:</b>      | “Islamic Community—Zvornik”                 |
| <b>Date Delivered:</b>   | 9 November 2000                             |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

In 1992 the Zamlaz, Riječanska and Divič mosques in Zvornik, the Republika Srpska, were destroyed. After the entry into force of the Dayton Peace Agreement the remaining parts of the graveyard at the Zamlaz site were removed and a multi-storey building was built on this site; the Riječanska site was illegally used as a market and car park; and on the Divič site a Serb Orthodox church was erected in 1998. The applicant alleged that the respondent Party violated its rights under Article 9 of the Convention and Article 1 of Protocol No. 1 to the Convention by preventing it from using the sites and reconstructing the mosques. In particular, the application raised the question of whether the applicant and its members had been discriminated against in the enjoyment of the rights guaranteed by these provisions. According to the land book, the sites of the former Zamlaz and Riječanska mosques were state owned. However, under the law, prior users of destroyed buildings on state owned land would have priority right to use the building sites for reconstruction. The site of the former Divič mosque was registered in the land book as the applicant's property, leaving no doubt, as to the applicant's continued right to use the site.

### Admissibility

Concluding first that the applicant met the requirement of a “victim” within the meaning of the Human Rights Agreement and that the application was therefore compatible *ratione personae*, and second that the domestic remedies accessible to the applicant could not satisfy the requirement of effectiveness in respect of the breaches alleged, the Chamber declared the application admissible, in so far as it concerned events said to have taken place after 14 December 1995.

### Merits

#### *Article 9 of the Convention*

The Chamber held that the use of the sites in question for other purposes prevented the applicant from using them for religious activities. It found no justification for this interference by the authorities of the respondent Party with the applicant's right to freedom of religion and, therefore, found a violation of Article 9.

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

In relation to the Zamlaz site the Chamber held that the removal of the graveyard and the construction of the multi-storey building substantially interfered with the applicant's possessions (i.e. the continued right to use the site). Regarding the Divič site, the Chamber found that the construction of the church substantially interfered with the applicant's enjoyment of its property rights. As the respondent Party did not formally divest the applicant of its rights the Chamber considered them to have involved a *de facto* deprivation of the applicant's possessions. The Chamber found that the failure of the respondent Party to prevent the use of the Riječanska site as a car park and market place made it impossible for the applicant to reconstruct the mosque and

constituted “an interference with the general principle of peaceful enjoyment of possessions.” The Chamber found that the interference was not in accordance with the public interest and, therefore, found a violation of the applicant’s right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1.

### *Discrimination*

The Chamber found that the applicant suffered discrimination in the enjoyment of its rights under Article 9 of the Convention and Article 1 of Protocol No. 1 to the Convention.

### **Remedies**

The Chamber ordered the Republika Srpska to allocate, within six months, a suitable and centrally located building site in Zvornik to permit, upon request of the Islamic Community, the construction of a mosque to replace the former Zamlaz mosque. In relation to the Riječanska site the Chamber ordered the Republika Srpska to grant, within three months of the receipt of a request to that effect from the Islamic Community, the necessary permit for reconstruction of the Riječanska mosque at the location at which it previously existed; to remove from this site, within one month, all market stands; to put an end to the use of the site as a car park; and not to permit the use of the site for any purpose affecting or interfering with the rights of the Islamic Community. Regarding the Divič site, the Republika Srpska was ordered to allocate, within six months, a suitable building site in the vicinity of the former Divič mosque to permit, upon request of the Islamic Community, the construction of a mosque to replace the former Divič mosque. The Republika Srpska was also ordered to pay the applicant KM 10,000 as compensation for moral damage.

### **Dissenting Opinions**

Mr. Mehmed Deković attached a partly dissenting opinion in which he argued that the Chamber’s compensation award was so deficient as to be a “bagatelle” that offended the religious feelings of the applicant.

Referring to his dissenting opinion in case no. CH/96/29, Mr. Vitomir Popović attached a dissenting opinion in which he argued that the application should have been declared inadmissible for non-exhaustion of domestic remedies and that it was wrong to award any compensation.

*Decision adopted 11 October 2000*

*Decision delivered 9 November 2000*

### **DECISION ON REQUESTS FOR REVIEW**

Both the applicant and the respondent Party submitted requests for review. The applicant requested review in respect of the following: (a) that, instead of ordering a replacement site for the Zamlaz mosque, the respondent Party should be ordered to tear down the four storey building and permit the construction of a mosque on the original site of the Zamlaz mosque; (b) that instead of ordering a replacement site for the Divič mosque, the respondent Party should be ordered to tear down the Orthodox church and permit the construction of a mosque on the original site of the Divič mosque; that the monetary compensation ordered was wholly inadequate as it failed to take into account the destruction of the graveyard at the Zamlaz mosque site and the removal of the gravestones, as well as the fact that it was the owner of the Divič mosque site. The respondent Party requested review in respect of the following: (a) that the application should be declared inadmissible for non-exhaustion of domestic remedies; (b) that the application was also incompatible with the agreement *ratione personae*; and (c) that, at any rate, the award of compensation was not justified, firstly because it related to damage that occurred prior to 14 December 1995, secondly, because, in domestic law, only natural persons, not legal persons like the applicant, may be awarded compensation for moral

damage and, thirdly, because the applicant had not requested compensation for moral damage and, therefore, the award exceeded the scope of the application.

The Chamber accepted the applicant's request for review in full, finding that it met the conditions required pursuant to Rule 64 paragraph 2 of its Rules of Procedure. The Chamber also accepted the respondent Party's request for review, in so far as it concerned the award of monetary compensation, finding that that part met the conditions required, but rejected the reminder of the respondent Party's request for review, as not meeting the conditions required under Rule 64 paragraph 2 of the Chamber's Rules of Procedure.

*Decision adopted 9 February 2001*

## **DECISION ON REVIEW**

### **Review regarding replacement of former Zamlaz Mosque**

The Chamber found that it was appropriate under the circumstances that the Islamic Community should be permitted, upon its request, to construct a mosque to replace the former Zamlaz mosque on a suitable and centrally located building site in the town of Zvornik. Accordingly, the Chamber concluded that the Second Panel's decision on admissibility and merits should remain unchanged in this respect.

### **Review regarding replacement of former Divič Mosque**

The Chamber found that it was appropriate under the circumstances that the Islamic Community should be permitted, upon its request, to construct a mosque to replace the former Divič mosque. In addition, the Chamber modified the Second Panel's decision of 11 October 2000 in order to reflect that the Islamic Community should be given ownership over a suitable alternative site upon which it may construct a mosque to replace the former Divič mosque. The Chamber ordered the respondent Party to make this reparation to the Islamic Community for the *de facto* deprivation of its land. The Chamber stated that such compensation in kind was necessary under the circumstances because the respondent Party, by permitting construction of the Serb Orthodox church on the site, had effectively divested the Islamic Community of its right to ownership of the land.

### **Review of conclusion regarding monetary compensation**

The Islamic Community had requested pecuniary compensation for destruction of the gravestones in the graveyard on the site of the former Zamlaz mosque. The Chamber stated that there was insufficient evidence in the case file to place a pecuniary value on the gravestones. Moreover, the Chamber interpreted the compensation claim to be more properly characterized in terms of moral damages because the full value of a graveyard and its gravestones cannot be represented by a pecuniary price.

The Chamber found that the award of compensation for moral damages suffered by the Islamic Community after 14 December 1995 in the amount of KM 10,000 was sufficient with respect to the Zamlaz and Riječanska mosque sites.

With respect to the Divič mosque site, the Chamber found that in deciding upon an appropriate award of compensation, the Second Panel had failed to take into consideration the fact that the Islamic Community was the owner of the land. The Chamber stated that the Islamic Community was entitled to compensation for its loss of property rights in the site of the former Divič mosque. Accordingly, the Chamber ordered the Republika Srpska to pay to the Islamic Community an additional sum of KM 50,000 for pecuniary and non-pecuniary damages for effectively divesting the Islamic Community of its property rights in the site of the former Divič mosque.

*Decision adopted 12 October 2001*

[Editor's note: The text of the decision on review does not address the respondent Party's arguments against the award of monetary compensation]

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/1066                           |
| <b>Applicant:</b>        | Savka KOVAČEVIĆ                      |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 May 2001                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is the occupancy right holder of an apartment in Novo Sarajevo, which she left in March 1996 to care for her sick mother in Ljubljana. Shortly thereafter, the apartment was declared temporarily abandoned, the locks to it were changed and another person started living in it. The case concerns the applicant's attempts to regain possession of her apartment. She pursued repossession of her apartment not only through competent local administrative bodies commencing in May 1998, but also with the CRPC in October 1998. In January 1999 the CRPC issued a decision confirming the applicant's status as the occupancy right holder of the apartment and finding that the applicant was entitled to regain possession of the apartment. In May 2000, the local administrative body also issued a decision confirming that the applicant was the occupancy right holder and allowing her to repossess the apartment. However, it was not until 4 December 2000 that the applicant finally repossessed her apartment.

### **Admissibility**

Noting that the remedies provided by domestic law could not remedy the applicant's complaints insofar as they related to the failure of the authorities to enforce the decisions of the local administrative body and the CRPC within the time-limits prescribed by law, the Chamber concluded that the applicant could not be required to pursue any further remedy provided by domestic law, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber noted that under the Law on Administrative Proceedings, the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. Thus the latest date on which the respondent Party should have issued a conclusion on the local administrative decision was on 23 September 2000, and the latest date on which the respondent Party should have issued a conclusion on the CRPC decision was on 18 April 1999. Noting that the applicant was not reinstated to her apartment until 4 December 2000, the Chamber found that the failure of the competent administrative organ to decide upon the applicant's enforcement requests in a timely manner was not "in accordance with the law." Thus there was a violation of the right of the applicant to respect for her home as guaranteed by Article 8.

#### *Article 1 of Protocol No. 1 of the Convention*

The Chamber found that the failure of the competent administrative organ to decide upon the applicant's enforcement request of the CRPC decision by 18 April 1999 and the failure of the competent administrative organ to decide upon the applicant's enforcement request of the Administration's decision by 23 September 2000 were contrary to the law. Thus there was a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

## **Remedies**

The Chamber ordered the Federation to pay to the applicant KM 2,000 in respect of non-pecuniary damage and KM 5,600 as compensation for the loss of use of the apartment and for any extra costs during the time the applicant was forced to live in alternative accommodation until 4 December 2000.

*Decision adopted 7 May 2001*

*Decision delivered 11 May 2001*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review. Given that the Human Rights Ombudsperson did not initiate proceedings before the Chamber based on her report in the applicant's case, the Chamber found that the applicant's prior application to the Human Rights Ombudsperson and the latter's report raised a "serious issue affecting the interpretation or application of the Agreement" in relation to the Chamber's jurisdiction. The Chamber also found that the case raised a "serious issue" affecting the application of the Human Rights Agreement and that "the whole circumstances justify reviewing the decision." Being of the opinion that the request met the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to accept the request for review.

*Decision adopted 6 July 2001*

## **DECISION ON REVIEW**

### **Jurisdiction**

The Chamber found that none of the grounds raised by the respondent Party to challenge the Chamber's jurisdiction to decide Ms. Kovačević's application in light of the Ombudsperson's earlier Report applied in this case. The Chamber pointed out that regardless of whether the Ombudsperson had considered a particular human rights matter, the Chamber retained jurisdiction to consider any application concerning allegations of violations of human rights. The Chamber stated that while it is true that often the Chamber had not exercised its discretion to decide such human rights cases that had already been considered by the Ombudsperson, this practice did not affect the Chamber's jurisdiction to do so in an appropriate case. According to the Chamber this was such an appropriate case and therefore the Chamber affirmed the Second Panel's conclusion as to jurisdiction.

### **Review of Decision in light of responsibility to disclose information**

In its request for review, the respondent Party emphasized and characterized the applicant's failure to disclose to the Chamber her earlier application to the Ombudsperson as "intentional" and argued that the applicant abused her right to appeal by intentionally keeping such information from the Chamber. The Chamber noted that both the applicant and the respondent Party were aware of this information and both had numerous opportunities to provide it to the Chamber and were under a continuing obligation to do so. The Chamber found no abuse by the applicant and no reason to overturn the Second Panel's decision on admissibility and merits on this basis.

### **Review of Decision on the merits**

In its request for review, the respondent Party challenged the decision because the applicant was reinstated to her apartment on 4 December 2000, five months prior to delivery of the Chamber's decision finding the respondent Party responsible for violations of the Convention. According to the respondent Party the Chamber should have struck out the application because the applicant was finally reinstated into possession of her apartment. Recalling its decision in *S.P.*, the Chamber

pointed out that Article VIII paragraph 3 of the Human Rights Agreement offers the Chamber an opportunity to exercise its discretion to strike out some applications, but the Chamber is not required to do so. On review of the decision on admissibility and merits, the Chamber found that the facts of Ms. Kovačević's case supported the Second Panel's decision to proceed with the case and not to strike it out under Article VIII paragraph 3.

#### **Review of Compensation award**

In its request for review the respondent Party challenged the award of compensation in light of the fact that the applicant was reinstated into possession of her apartment before delivery of the Chamber's decision and in light of the Ombudsperson's Report which contained no recommendation for the payment of compensation. The Chamber reiterated that it has discretion to decide this case even though the Ombudsperson earlier adopted a Report containing recommendations on the same matter. Recalling its decision in *S.P.*, the Chamber stated that it may exercise its discretion to proceed to decisions on the merits and award compensation in cases in which the applicant had been reinstated into possession of the property forming the basis of the application. The Chamber stated that in such cases, it proceeds to the merits on a case by case basis according to the facts of the individual case and the surrounding circumstances. In this case, the Chamber found that the facts and circumstances of Ms. Kovačević's case supported the decision and the award of compensation ordered.

*Decision adopted 12 October 2001*

|                          |                                     |
|--------------------------|-------------------------------------|
| <b>Cases Nos.:</b>       | CH/98/1124 et al.                   |
| <b>Applicants:</b>       | Fehreta and Refik DIZDAREVIĆ et al. |
| <b>Respondent Party:</b> | Republika Srpska                    |
| <b>Other Title:</b>      | “21 Gradiška Cases”                 |
| <b>Date Delivered:</b>   | 9 June 2000                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

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 were occupied by refugees and internally displaced persons of Serb origin, most of whom received decisions from the authorities of the Republika Srpska entitling them to do so. Most of the applicants returned to the area after the war ended. In three of the cases the applicants regained possession of part or all of their properties. The cases concern the applicants' 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 and the Ministry for Refugees and Displaced Persons under the old Abandoned Property Law, initiating proceedings before the Court of First Instance in Gradiška, applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property under the new Abandoned Property Law and applying to various political institutions of the Republika Srpska.

### **Admissibility**

Finding that the applicants could not be required to exhaust any further domestic remedy, and that the applicants' failure to apply to the CRPC did not bar it from considering their cases, the Chamber declared the cases admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the old Abandoned Property Law did not meet the standards of a “law” as required by Article 8 paragraph 2. While the Chamber considered that the new Abandoned Property Law does meet the requirements of Article 8 paragraph 2, as it grants the applicants a right to regain possession of their properties, the Chamber noted that the realisation of this right was delayed. Accordingly, the Chamber found that the conduct of the respondent Party was not “in accordance with the law” as required by Article 8 paragraph 2, and thus that there was a violation of the applicants' rights under Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that there was a violation of the rights of the applicants to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

#### *Article 6 of the Convention*

Noting that the effect of the practice of the Court of First Instance in Gradiška to decline jurisdiction in cases this nature was that it was or would 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, the Chamber found a violation of the applicants' rights to effective access to court as guaranteed by Article 6.

#### *Discrimination*

Noting that all of the applicants are of Bosniak origin, the Chamber found that the passage and application of the old Abandoned Property Law constituted 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 was based on the ground of national origin in respect of all of the applicants, and the new Abandoned Property Law had failed to remedy this situation. Thus the Chamber found that the applicants had 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.

#### **Remedies**

The Chamber ordered the Republika Srpska to enable the applicants who had not already done so to regain possession of their properties without further delay. The Chamber awarded each of the applicants sums ranging from KM 1,200 to KM 3,500 for rental payments incurred in respect of paying for alternative accommodation and/or for mental suffering.

*Decision adopted 10 May 2000*

*Decision delivered 9 June 2000*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1171       |
| <b>Applicant:</b>        | Ševala ČUTURIĆ   |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 October 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is of Bosniak origin and worked at the Institute for Health Protection in Banja Luka until 28 January 1993, when her employment was terminated. The reason given for the termination was that a member of the applicant's family had failed to comply with a mobilisation order to join the Army of the Republika Srpska. The applicant initiated proceedings before the Court of First Instance in Banja Luka against her termination on 11 February 1993. A hearing was held on 10 July 1995 after which the Court requested information from the Institute for Health Protection. The information was not received and the proceedings were still pending at the time of the Chamber's consideration.

### **Admissibility**

Since the actual termination occurred on 28 January 1993, prior to the entry into force of the Dayton Peace Agreement, it was outside the Chamber's competence *ratione temporis*. Thus the Chamber found the application admissible only insofar as it concerned proceedings that had continued after 14 December 1995.

### **Merits**

#### *Article 6 of the Convention*

The Chamber found that the case was not complex, that the conduct of the applicant was not responsible for the delay of the proceedings, that the conduct of the national authorities was unreasonable, as they had remained passive as regards the failure of the Institute for Health Protection to supply information requested by the Court, and that this was the only reason for the delay. Considering that national law requires employment disputes to be dealt with as a matter of urgency, the Chamber found that the length of time that the proceedings had been pending before the Court was unreasonable and thus that the applicant's right to a fair trial within a reasonable time guaranteed by Article 6 had been violated.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to ensure that the applicant's proceedings before the Court of First Instance were decided upon within a reasonable time and in accordance with the applicant's rights as guaranteed by the Human Rights Agreement.

*Decision adopted 8 September 1999*

*Decision delivered 8 October 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1195       |
| <b>Applicant:</b>        | Rahima LISAC     |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 12 May 2000      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, to regain possession of an apartment in Banja Luka of which she is the owner. She lived in the apartment until September 1995, when she vacated it and entered into a contract for the rental of the apartment with V.Đ. On 15 October 1995 the apartment was declared abandoned by the High Commission for Accommodation of the Bosnian Serb Army. On 4 June 1996 the applicant initiated court proceedings against V.Đ. During these proceedings V.Đ. produced a decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Banja Luka of 11 April 1997, allocating the apartment to V.Đ. On 24 January 1999 the applicant appealed to the Ministry for Refugees and Displaced Persons, claiming she was forced by V.Đ. to enter into the contract. At the time of the Chamber's consideration, the applicant had initiated administrative and judicial proceedings to regain possession of the apartment, but without success.

### Admissibility

The Chamber found that there were no further domestic remedies that the applicant could be required to exhaust, and declared the application admissible.

### Merits

#### *Article 6 of the Convention*

On 4 February 1999 the Court of First Instance in Banja Luka declared itself incompetent to deal with the applicant's matter. The practical effect of this decision was that it was impossible for the applicant to have the merits of her civil action determined by a tribunal. Thus there was a violation of the applicant's right to effective access to court as guaranteed by Article 6.

#### *Article 8 of the Convention*

Noting that the applicant was unable to regain possession of the apartment due to the failure of the authorities of the Republika Srpska to deal effectively with her various applications in this regard, the Chamber found that the respondent Party was responsible for the interference with the right of the applicant to respect for her home as of 11 April 1997, the date of the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property. As the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property allocating the apartment to V.Đ. for his use did not meet the requirements of the Law on the Use of Abandoned Property, it was not "in accordance with the law" as required by Article 8 paragraph 2. In addition, the decision of the Court of First Instance in Banja Luka to reject the applicant's application to regain possession of her home, as it considered itself incompetent in such matters, was not in accordance with the Constitution of the Republika Srpska, and thus not "in accordance with the law" as required by Article 8 paragraph 2. Thus there was a violation of the right of the applicant to respect for her home as guaranteed by Article 8.

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

Given that the allocation of the apartment to V.D by the Commission for the Accommodation of Refugees and Administration of Abandoned Property and the failure of the authorities to enable the applicant to regain possession of the apartment was not in accordance with the law, the Chamber found a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to ensure that the applicant regained possession of her apartment, and to pay the applicant KM 2,500 as compensation for the loss of use of her apartment and for moral suffering.

*Decision adopted 8 May 2000*

*Decision delivered 12 May 2000*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1198       |
| <b>Applicant:</b>        | Božidar GLIGIĆ   |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 October 1999   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

On 16 August 1995 the applicant entered into a contract with the owners of a house in Banja Luka. The main terms of the contract were that the applicant was entitled to use the house for an indefinite period of time or until the owners returned to Banja Luka. The contract was verified by the Municipality of Banja Luka. On 14 September 1998 the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka, a department of the Ministry for Refugees and Displaced Persons, issued a decision declaring the applicant to be an illegal occupant and ordering him to vacate the house within three days of the date of delivery of the decision, under threat of forcible eviction. On 17 September 1998 the applicant appealed to the Ministry for Refugees and Displaced Persons, yet received no response. On 29 September 1998 there was an attempt to evict the applicant, which he managed to postpone.

### Admissibility

Referring to *Blagojević* and considering the non-suspensive effect of the appeal lodged by the applicant and the size of the fee the applicant would have had to pay to initiate the administrative dispute, and the fact that the respondent Party did not seek to argue that there was any effective remedy available to the applicant, the Chamber concluded that no such remedy was available to him and declared the case admissible.

### Merits

#### *Article 8 of the Convention*

While the old Abandoned Property Law requires a property to be entered into the minutes of abandoned property before it can be allocated, no such entry was made in this case. Thus the requirements of the Abandoned Property Law were not adhered to and the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property of 14 September 1998 cannot be considered to have been "in accordance with the law" within the meaning of Article 8 paragraph 2. Thus there was a violation of Article 8.

### Remedies

The Chamber ordered the Republika Srpska to revoke the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property of 14 September 1998 and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of his contract.

*Decision adopted 9 September 1999*

*Decision delivered 8 October 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1221       |
| <b>Applicant:</b>        | Ljiljana OKULIĆ  |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 September 2000 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant was the occupancy right holder over an apartment in Banja Luka. On 25 December 1995 the Secretariat for Economy of the Municipality of Banja Luka granted the applicant the occupancy right over a second smaller apartment, at the same time terminating her occupancy right over the first apartment and allocating it to someone else. The applicant initiated various administrative and judicial proceedings to regain possession of the first apartment and on 4 April 2000 succeeded in doing so.

### **Admissibility**

While the applicant could have appealed the decision of 25 December 1995, the applicant did not do so, claiming that the appeal had no prospect of success. The Chamber considered that the applicant did not substantiate her claim that the domestic remedies were ineffective and therefore found that insofar as it concerned the decision of 25 December 1995 the application was inadmissible for non-exhaustion of domestic remedies. Since the applicant regained possession, the Chamber concluded that any violation of the applicant's right to respect for her home and her right to peaceful enjoyment of her property that may have occurred was remedied. Thus insofar as it concerned the applicant's reinstatement, the Chamber concluded that this part of the application had been resolved and struck it out. Insofar as it related to the proceedings initiated by the applicant, the Chamber declared the case admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber found neither the complexity of the case nor the conduct of the applicant had caused any delay in the proceedings. As to the conduct of the national authorities, the Chamber considered that, although the proceedings had been pending for over two years, this period was not so unreasonably long as to constitute a violation of the rights of the applicant guaranteed under Article 6.

*Decision adopted 6 July 2000*

*Decision delivered 8 September 2000*

|                          |                    |
|--------------------------|--------------------|
| <b>Case No.:</b>         | CH/98/1232         |
| <b>Applicant:</b>        | Nedeljko STARČEVIĆ |
| <b>Respondent Party:</b> | Republika Srpska   |
| <b>Date Delivered:</b>   | 10 December 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He is the holder of an occupancy right over an apartment in Doboj, the Republika Srpska. On 18 June 1997 the applicant was granted a permanent occupancy right over the apartment by the holder of the allocation right. On 12 October 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Doboj, a department of the Ministry for Refugees and Displaced Persons, declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within three days under threat of forcible eviction. On 14 October 1998 the applicant appealed the decision. At the time of the Chamber's consideration, there had been no decision on this appeal and the applicant still occupied the apartment.

### **Admissibility**

Considering the non-suspensive effect of the appeal lodged by the applicant and the fact that the respondent Party did not specify what effective remedy it considered to be available to the applicant, the Chamber decided that no such remedy was in fact available to him and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property constituted an interference with the applicant's right to respect for his home. Since the apartment was not entered into the register of abandoned property prior to being registered as abandoned property and allocated, as required by the Law on the Use of Abandoned Property, the Chamber found the interference not to be "in accordance with the law." Thus there was a violation of Article 8.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property and to allow the applicant to enjoy undisturbed occupancy of the apartment subject to the terms of the Law on new Abandoned Property Law.

*Decision adopted 6 December 1999*

*Decision delivered 10 December 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1237       |
| <b>Applicant:</b>        | F.G.             |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 October 1999   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant and his father, the then owner of a house in Janja, were forcibly evicted from it on 27 August 1994. They returned in October 1994 to find it occupied by Bosnian Serbs, displaced from the Federation. After filing several requests in administrative proceedings, the applicant initiated court proceedings on 25 November 1996 before the Municipal Court in Bijeljina. On 13 January 1999 the applicant entered into possession of his house.

### **Admissibility**

Since the applicant regained possession of the house, the Chamber concluded that any violation of the applicant's right to respect for his home and his right to peaceful enjoyment of his property that may have occurred was remedied. The Chamber therefore concluded that this part of the application had been resolved and struck it out. Insofar as it related to possible violations of the applicant's right to a fair and public hearing within a reasonable time, the Chamber declared the application admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber found that neither the complexity of the case nor the conduct of the applicant had caused any delay in the proceedings. Rather, the delay in deciding upon the applicant's case was a result of the backlog of the court, which was due to a lack of personnel. As soon as a new judge was appointed, a hearing was scheduled and a decision was issued within three months. Noting that the European Court of Human Rights has held that a temporary backlog of court business does not engage the responsibility of the state concerned, provided it takes effective remedial action with the requisite promptness, the Chamber found that there had been no violation of Article 6.

*Decision adopted 9 September 1999*

*Decision delivered 8 October 1999*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1245       |
| <b>Applicant:</b>        | Persa SLAVNIĆ    |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 5 November 1999  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina, resident in Banja Luka, and a refugee from Šibenik, Croatia. In November 1992 her husband exchanged their apartment in Šibenik for one in Banja Luka. Due to the hostilities the applicant was not able immediately to enter into possession of the apartment in Banja Luka after the contract on exchange was made. When she came to Banja Luka in November 1993 the apartment was already occupied by an employee of the holder of the allocation right. In November 1993 the applicant's husband initiated civil proceedings, requesting the eviction of the occupant. By several decisions taken by the Municipal Court and the Regional Court in Banja Luka, the request was refused. However, the Supreme Court of the Republika Srpska quashed these decisions and referred the case back to the Municipal Court, where the case remained pending. In October 1994 the applicant's husband initiated administrative proceedings before the Municipality of Banja Luka, requesting that he be able to enter into possession of the apartment. The Municipality granted the request, and the Ministry for Urbanism, Housing-Communal Affairs and Civil Engineering refused the occupant's appeal. The occupant then initiated an administrative dispute before the Supreme Court. The Supreme Court ordered the occupant to vacate the apartment and return it to the holder of the allocation right until the civil proceedings were concluded. At the time of the Chamber's consideration, he still occupied the apartment.

### **Admissibility**

Noting that the applicant filed an application with the Office of the Human Rights Ombudsperson but that the case was terminated by the decision to close the investigation in April 1999, the Chamber found that because the case was no longer pending before that office, the Chamber could consider the application. Thus the Chamber declared the application admissible insofar as it related to the conduct in the applicant's proceedings as they had continued after 14 December 1995.

### **Merits**

#### *Article 6 of the Convention*

The Chamber noted that the obligation on domestic courts to act fairly includes an obligation to interpret and apply domestic law in good faith. This implies that they should treat relevant decisions of superior courts with due respect. Here, both the Municipal Court and the Regional Court refused to follow the Supreme Court's clear rulings on questions of law without stating any convincing reason for this refusal. Thus the Chamber concluded that they did not act "fairly" in considering the issues of law which arose, and that the applicant's right to a "fair hearing" as provided for by Article 6 was violated.

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

First, the Chamber noted that the applicant had not yet become the holder of the occupancy right over the apartment in question and that it was the applicant's husband who entered into the exchange contract and the contract on the use of the apartment. Since her husband was still considered to be the party in the domestic proceedings and the respondent Party did not dispute her right to pursue her claim, the Chamber found that the applicant was entitled to seek to enter into possession of the apartment in question. Second, as in *Medan*, the Chamber found that contractual

rights, even revocable rights, are “possessions” for the purposes of Article 1 of Protocol No. 1. Third, the Chamber noted that there were no justified reasons for the municipal and regional courts to keep refusing the applicant’s request to be enabled to enter into possession of her apartment. Thus these actions were not “subject to conditions provided for by law” and there was a violation of the applicant’s right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska to enable the applicant to enter into possession of her apartment without further delay and to pay to the applicant KM 2,000 by way of compensation for mental suffering.

*Decision adopted 1 November 1999*

*Decision delivered 5 November 1999*

|                          |                        |
|--------------------------|------------------------|
| <b>Cases Nos.:</b>       | CH/98/1309 et al.      |
| <b>Applicants:</b>       | Almasa KAJTAZ et al.   |
| <b>Respondent Party:</b> | Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 7 September 2001       |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicants, who are of various ethnic origins, were employees in the Ministry of Justice and General Administration of the Republic of Bosnia and Herzegovina. In December 1997, a new Ministry for Civil Affairs and Communication was established and the applicants were not officially assigned to any post within this new Ministry. The applicants allege that after the establishment of the Ministry for Civil Affairs and Communication, they continued working there, in the same positions until various dates in the beginning of 1999. On 8 September 1998, they learned that they had been relegated to the status of “unassigned” workers and that as a result they received lower salaries than other employees and stopped receiving benefits commencing on or around June 1998. They stopped receiving any compensation on 31 December 1998. They ceased working sometime between January and March 1999, respectively. They had never received procedural decisions terminating their working relations or relegating them to the status of unassigned workers. In November 1998 all applicants but one initiated civil proceedings before the Municipal Court I in Sarajevo requesting compensation, but no decisions had yet been issued.

### **Admissibility**

While all but one of the applicants initiated lawsuits before the Municipal Court I in Sarajevo, the respondent Party did not believe the Municipal Court had jurisdiction and did not defend itself in the lawsuits. Thus the respondent Party was barred from arguing that this remedy was “effective.” In addition, since the applicants did not have the necessary procedural decisions upon which to challenge the legality of the decision effectively terminating their employment, there was no State Court, and there was no State attorney appointed to represent the State before the Federation courts, there was no effective domestic remedy for the alleged violations of which the applicants complained. Thus the applicants could not be required to exhaust any further domestic remedies, and the Chamber declared the applications admissible in their entirety.

### **Merits**

#### *Article 6 of the Convention*

The Chamber concluded that whether or not the Municipal Court declared itself competent to hear the applicants’ cases, the overall legal system for adjudicating these claims was not sufficiently coherent or clear. The applicants did not have a court in which to actually have their claims heard. The opportunity to file a claim but not have the claim determined does not satisfy the requirements of Article 6 paragraph 1. Thus Bosnia and Herzegovina violated the applicants’ practical, effective right of access to court.

#### *Article 13 of the Convention*

In view of its decision concerning Article 6 of the Convention, the Chamber considered that it did not have to examine the case under Article 13, which guarantees the right to an effective remedy before a national authority.

### *Discrimination*

The Chamber considered the applicants' allegation of discrimination in relation to Article 25(c) of the ICCPR, which guarantees access to "public service" without discrimination. The Chamber found that there was differential treatment of all of the applicants based on ethnic origin. It appears that the differential treatment was intended to serve the goal of promoting public confidence in the administration of the government of Bosnia and Herzegovina in the aftermath of the war through the "equal representation" principle, i.e. by ensuring equal representation of the constituent people of BiH in the staff of the Ministries.

While the differential treatment arising from the attempt to obtain fair representation may have been in pursuit of a legitimate aim, in order for this aim to have been achieved in a legitimate manner the process must have been transparent, fair and objective. No clear reasons were given as to why these particular applicants were not employed. Further evidence of the vague and inadequate selection process was found with respect to the applicants of mixed origin or mixed marriages, or the Serb applicant living in the Federation. As the Chamber could not find that the means employed were proportional to the aim pursued, it held that the applicants were discriminated against on the ground of national and ethnic origin in their enjoyment of the right to access to public service, and thus that Bosnia and Herzegovina violated its obligations under the Dayton Peace Agreement.

### **Remedies**

The Chamber ordered Bosnia and Herzegovina to pay to the applicants various sums as compensation for lost income, benefits and moral damages.

*Decision adopted 4 September 2001*

*Decision delivered 7 September 2001*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that (a) Article 6 of the Convention was wrongly applied because the applicants were civil servants; (b) the Chamber wrongly established a violation of Article 6 paragraph 1 of the Convention because the domestic court acted fairly and did not exceed a reasonable time period; (c) the Chamber was not competent to consider the applicants' complaints under Article 25 of the ICCPR absent "alleged or apparent discrimination" in relation to the rights guaranteed by the ICCPR; and (d) the compensation awarded was incorrectly calculated because it was based only on the submissions of the applicants. The Chamber decided that with respect to all the issues raised in the request for review, it could not be said that the whole circumstances justified reviewing the decision of the First Panel, as required by Rule 64 paragraph 2(b) of its Rules of Procedure.

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/1311 and CH/01/8542            |
| <b>Applicants:</b>       | Džavid KURTIŠAJ and M.K.             |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 September 2002                     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The case concerns the attempts of the applicants, who are husband and wife, to repossess an apartment in Sarajevo, Federation of Bosnia and Herzegovina, and to be registered as the owners. The first applicant concluded a purchase contract of the apartment with the Yugoslav National Army and on 17 February 1992 paid the full price. He was not registered as the owner due to the war and submitted several unsuccessful requests to local bodies and to the the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") in regard to his claims.

As an active member of the JNA until 6 August 1999, the Administration of Housing Affairs of the Sarajevo Canton held that he fell under Article 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right. Article 3a came into force on 1 July 1999. Article 3a essentially prevents persons who were in active military service with the JNA on 30 April 1991, who were not citizens of the Socialist Republic of Bosnia and Herzegovina as of that date, and who had not been granted refugee or other equivalent protective status in a country outside of the former Socialist Federal Republic of Yugoslavia from repossessing apartments in the Federation of Bosnia and Herzegovina. Additionally, persons who remained in active military service of any armed forces outside the territory of Bosnia and Herzegovina after 14 December 1995 are barred from repossessing apartments in the Federation of Bosnia and Herzegovina.

On 11 November 1998, the applicants entered the apartment illegally and have been living there since.

On 12 November 1998, M.K. was taken to the police for entering into the apartment by force after the housing authority had locked and sealed the door. She claimed that the police maltreated her.

### **Admissibility**

The Chamber held that the second applicant failed to substantiate her allegations of maltreatment during police questioning and failed to submit any evidence which could support her allegations. Therefore, the Chamber held that the allegation of maltreatment did not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement.

The respondent Party objected to the admissibility of the applications on the ground that the applicants failed to exhaust domestic remedies. Specifically, the respondent Party argued that the first applicant had withdrawn his request for repossession of the apartment to the Administration for Housing Affairs in Sarajevo because he had regained possession. The Chamber held that even if the applicants had sought to avail themselves of further domestic remedies available to them, they would have no prospect of success as a result of the application of Article 3a of the Law of Cessation in conjunction with Article 39 of the Law on Sale of Apartments with an Occupancy Right. The Chamber was therefore satisfied that the applicants could not be required to exhaust any further domestic remedies.

### **Merits**

The Chamber held that since the first applicant concluded a purchase contract, the Chamber would focus on his rights as the owner of the apartment in order to establish whether his rights have been violated. As a consequence, there was no need to examine his rights as an occupancy right holder. Since the second applicant did not conclude such a contract and since she cannot derive any rights from the contract her husband concluded, the Chamber decided that the application of the second applicant did not raise a separate issue under Article 8 of the Convention or under Article 1 of Protocol No. 1 to the Convention. Therefore, the Chamber would not examine the alleged violations of these articles with regard to the second applicant.

*Article 1 of Protocol No. 1 to the Convention and discrimination in the enjoyment of the right to peaceful enjoyment of possessions*

The Chamber held that the applicants complaints fell within the ambit of Article 1 of Protocol No. 1 to the Convention, and recalling the *Miholić & Others Cases*, held that the analysis of the allegation of discrimination was inextricably linked with the question of the justification of the interference with the applicant's enjoyment of his claimed possessions. It decided to consider the complaint under Article 1 of Protocol No. 1 to the Convention and the complaint of discrimination together.

The Chamber found that the applicant, by the application of Article 3a of the Law on Cessation in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right, was made to bear an "individual and excessive burden" that simply could not be justified. This was particularly clear in light of the fact that the reasons for denying the applicant the enjoyment of his property rights were based, in part, on discriminatory grounds. As such, these interferences could not be considered to be in accordance with the public interest. The Chamber, therefore, found a violation of the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention as well as discrimination in the enjoyment of this right.

*Article 8 of the Convention*

The Chamber held, considering that the applicant was de facto living in the apartment, it was unnecessary to examine whether there has also been a violation under Article 8 of the Convention.

**Remedies**

The Chamber ordered the Federation to take all necessary legislative or administrative actions to render ineffective the annulment of the first applicant's contract and enable him to register his ownership over his apartment, thus permitting him to exercise his property rights. The Chamber further ordered that the provisional measures ordering the respondent Party to refrain from any action to evict the applicant Džavid Kurtišaj and his family from the apartment, issued on 2 April 2001 would be prolonged until such time as the applicant is registered in the land books as the owner of the apartment

**Dissenting Opinion**

Mme. Michèle Picard disagreed that there had been a violation of the applicant's right to property for the reasons that were stated in the partly dissenting opinion of Mr. Nowak, which she joined, in the *Miholić* decision. As in the *Miholić* case, the applicant bought the apartment only a few weeks before the outbreak of the war. He left Bosnia and Herzegovina with the JNA in June 1992 and remained in active service of the army of Yugoslavia until 1999. The non-recognition of his contract of purchase by the authorities of the Federation of Bosnia and Herzegovina was, in her opinion, within the broad margin of appreciation a state enjoys under Article 1 of Protocol No. 1 to the Convention.

*Decision adopted 2 September 1999*  
*Decision delivered 6 September 2002*

**DECISION ON REQUEST FOR REVIEW**

On 7 October 2002 the respondent Party submitted a request for review in which it argued that the Chamber erred in considering the first applicant as the owner of the apartment, since he was only a purchaser, who would have become the owner when the seller issues the consent for registration in the land books. The respondent Party also underlined that the aim and purpose of the laws and decrees which caused the annulment of the purchase contract of the first applicant, was meeting the problem of the lack of housing. The respondent Party further argued that returning the purchase price and compensating any damage would have constituted a sufficient remedy to the violations found by the Chamber. The respondent Party also argued that since on 28 May 2002 the CRPC, in deciding upon a request of the first applicant, decided that he was not to be considered a refugee, the respondent Party had not violated the applicants' rights.

The Chamber was of the opinion that the serious questions affecting the interpretation and application of the Agreement raised by both the present application and the *Miholić and Others* cases had already been dealt with.

With regard to the ordered remedies, the Chamber recalled that it has always held that a request for review directed against "the amount and type of compensation awarded (...) as well as the method used when deciding on (the) claim for compensation" does not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance", as required in Rule 64(2)(a).

With regard to the claim that the CRPC decision of 28 May 2002 confirms that the first applicant was not to be considered a refugee, the Chamber considered that this "new fact" does not justify a review of the decision, since the decision of the First Panel of 2 September 2002 was in no way based on the assumption that Džavid Kurtišaj was to be considered a refugee.

The Chamber concluded that request did not meet the two conditions required by the Chamber to accept such a request pursuant to Rule 64(2) of its Rules of Procedure and thus decided to reject the request.

*Decision adopted 6 November 2002*

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|----------------------------|--|
| <b>Case No.:</b>           | CH/98/1324   |
| <b>Applicant:</b>          | Milan HRVAČEVIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 8 March 2002   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina. On 14 March 1996 he was arrested in Sarajevo on suspicion of having committed war crimes against the civilian population. When the applicant was arrested there was no approval of the Prosecutor of the ICTY for the arrest and for the institution of criminal proceedings as required by the "Rules of the Road". The consent of the ICTY Prosecutor was received by the Higher Court in Sarajevo on 17 May 1996, when the investigation proceedings had been pending for over two months. In June 1997 the Cantonal Court in Sarajevo found the applicant guilty of having committed the criminal act of war crimes against the civilian population and sentenced him to 15 years imprisonment. The applicant filed an appeal to the Supreme Court of the Federation of Bosnia and Herzegovina. In June 1998 the Supreme Court issued a decision without holding a public hearing, by which it reduced the applicant's sentence to 12 years imprisonment.

### Admissibility

Observing that under domestic law the matters complained of (administration of justice) did not fall into the competence of the State of Bosnia and Herzegovina, the Chamber found the application inadmissible *ratione personae* against Bosnia and Herzegovina. The Chamber noted that Article 7 of the Convention concerned the principle of *nullum crimen sine lege*. Since the applicant was arrested pursuant to a statute in effect at the time of arrest, his Article 7 claim was declared inadmissible as manifestly ill-founded. The Chamber also noted that there was no duty to exhaust extraordinary remedies, and that failure to do so did not make the application inadmissible. The Chamber declared the rest of the application admissible, namely claims concerning Article 5 and 6 of the Convention as directed against the Federation.

### Merits

#### *Article 5 of the Convention*

The Chamber found that no approval for an order, warrant or indictment against the applicant from the ICTY Prosecutor was received by the Higher Court in Sarajevo before 17 May 1996. The Rules of the Road, which require such order, warrant or indictment to be approved by the ICTY Prosecutor, entered into force on 18 February 1996. The applicant's arrest and detention from 14 March 1996 to 17 May 1996, i.e. for more than 2 months, were therefore not "lawful" as required by paragraph 1(c) of Article 5. Accordingly, the Chamber concluded that the applicant's arrest and detention from 14 March 1996 to 17 May 1996 constituted a violation of Article 5 paragraph 1 of the Convention.

#### *Article 6 of the Convention*

The applicant raised three issues under Article 6: that he was not allowed to present evidence, that he was denied opportunity to call witnesses, and that no public hearing was held by the Supreme Court of the Federation of Bosnia and Herzegovina. The Chamber noted that generally it is for the domestic courts to assess the evidence before them and to assess whether it is appropriate to call witnesses. Observing that it could not substitute its own judgement for that of the national courts, the Chamber found no violation in this regard. Examining the minutes of the applicant's trial, the Chamber did not find any evidence supporting the applicant's allegation that his right to examine witnesses was violated. The Chamber also noted that the Supreme Court of the Federation reviewed

the written submissions of the applicant, that the Court had ample evidence to review, and that no request for a hearing was filed. Consequently, the Chamber concluded that the absence of a public hearing at the Supreme Court of the Federation was not a violation of Article 6.

### **Remedies**

The Chamber noted that the Supreme Court, when deciding upon the applicant's sentence, took into account the time he had spent in detention from 15 March 1996. The Chamber was therefore of the opinion that a decision finding a violation of the applicant's human rights was sufficient satisfaction as a remedy for the harm suffered by him.

*Decision adopted 8 February 2002*

*Decision delivered 8 March 2002*

|                          |   |
|--------------------------|---|
| <b>Cases Nos.:</b>       | CH/98/1335 et al.   |
| <b>Applicants:</b>       | Zuhdija RIZVIĆ et al.   |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina  |
| <b>Date Delivered:</b>   | 8 March 2002 (partial decision on admissibility and decision on the merits) |

## **DECISIONS ON ADMISSIBILITY AND MERITS**

### **Factual background**

On 27 September 1993 Fikret Abdić proclaimed the “Autonomous Province of Western Bosnia” (“the Autonomy”) on the territory of the Velika Kladuša and Cazin municipalities. The applicants Rizvić, Huskić, Šabančević and Gračanin, all of Bosniak descent, were members of the armed forces of the Autonomy. The applicant Sefić, also of Bosniak descent, was detained in the Serb run concentration camp “Sana Keran” in the Una-Sana Canton. After the victory of the Army of Bosnia and Herzegovina over the armed forces of the Autonomy, the applicants were arrested, indicted and convicted either for having committed war crimes or for multiple counts of murder.

### **Admissibility (separate decisions of 3 July, 12 October and 7 November 2001, respectively and partial decision of 5 March 2002)**

The Chamber declared all the applications admissible as to the claims of right to fair trial and the non-compliance of the respondent Party with the Rules of the Road. For some of the applicants, the Chamber also found admissible claims of maltreatment during police custody or custody in the district prison, lack of investigation by the investigation judge and double jeopardy.

### **Merits**

#### *Article 3 of the Convention*

The Chamber noted that in order to fall within the scope of Article 3, the treatment complained of must have attained a minimal amount of severity. The Chamber paid particular attention to the vulnerability of the applicants during police custody, duration of custody, and their inability to protect themselves during beating incidents. Reviewing the evidence, the Chamber found that applicants Huskić, Šabančević and Gračanin could not protect themselves against the police officers punching, kicking and beating their bodies, heads and foot soles with baseball bats and rubber truncheons for days on end. The Chamber found that this amounted to inhuman and degrading treatment in violation of Article 3. The Chamber found that there had been no violation of Article 3 in the case of the applicant Rizvić, since that applicant's allegations of ill-treatment in the Bihać District Prison were unsubstantiated.

#### *Article 5 of the Convention*

The Chamber found that the respondent Party did not comply with the Rules of the Road in any of the cases, thereby violating Article 5 paragraph 1 rights of all the applicants. The Chamber noted that the Rules of the Road became law on 18 February 1996 and that even for applicants arrested very shortly afterwards, the respondent Party had an obligation to comply with the rules during the applicants' subsequent custody. In response to the Federation's claim that the Bihać courts were not aware of the Rules of the Road, the Chamber observed that it was the respondent Party's duty to make the courts aware of the Rules and that failure to do so was a violation of the Convention.

#### *Article 6 of the Convention*

As to the right to a fair trial, guaranteed by Article 6 paragraph 1, the Chamber concluded that there had been no violation in the cases of the applicants Sefić and Gračanin. In the cases of the

applicants Huskić, Rizvić, and Šabančević however, the Chamber did establish violations of this right. The Chamber found that Huskić was not informed sufficiently of the accusation against him and not given adequate opportunity to prepare his defence. In addition, the Chamber noted that under domestic law, there was no possibility for the applicant to appeal against his conviction on the ground that he was found guilty of an offence different from the one he was charged with. The violations in the cases of Šabančević and Rizvić concerned their rights to examine and call witnesses. The Chamber did not find the amount of witnesses heard on proposal of the prosecution and on proposal of the defence necessarily disproportionate. However, in combination with the fact that the testimony of one of the refused witnesses appeared to have possibly been of significant importance to the outcome of the proceedings, and the importance of confronting witnesses with the fact that their testimony was contradictory on decisive points, the Chamber was of the opinion that the court's reasoning in rejecting the defence's request that there had been enough hearings and testimony in the case in order for the court to reach a decision, was insufficient and not consistent with the concept of a fair trial.

*Article 4 of Protocol No. 7 to the Convention*

The Chamber found that there had been no violation of the right of the applicant Gračanin not to be tried or punished for the same crime twice as guaranteed under Article 4 of Protocol No. 7 to the Convention.

**Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to pay to the applicants Huskić, Šabančević and Gračanin the sum of KM 3,000 by way of compensation for the maltreatment suffered while in custody of the Bihać police. The Chamber further ordered that the applicant Huskić be released from detention at the latest when the Chamber's decision becomes final and binding in accordance with its Rules of Procedure. The Chamber ordered the Federation of Bosnia and Herzegovina to pay to the applicant Gračanin the sum of KM 2,000 by way of compensation for his unlawful detention. Finally, the Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to re-try the criminal cases against the applicants Rizvić, Huskić and Šabančević.

*Decision adopted 5 March 2002*  
*Decision delivered 8 March 2002*

**DECISION ON REQUEST FOR REVIEW**

In his request for review, the applicant, Ahmet Sefić, case no. CH/99/2805, argued that (a) the Chamber in finding no violation of Article 6 of the Convention, had failed to consider the fact that he did not have adequate time to prepare his defence after his indictment had been changed from charging him with war crimes to charging him with ordinary murder, which the applicant only learned on the day of the trial; (b) that the Chamber in finding no violation of Article 6 of the Convention, did not adequately consider his allegation that witnesses proposed by him were not heard; and (c) that although in both his case and the case of the applicant Gračanin a violation of Article 5 paragraph 1 was found, and although the applicant was held in unlawful detention for almost seven months, the Chamber did not award him any compensation, whereas it awarded the applicant Gračanin KM 2,000. The Chamber decided that with respect to all the issues raised in the request for review, it could not be said that they raised "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance", as required by Rule 64 paragraph 2(b) of its Rules of Procedure. Therefore the Chamber decided to reject the request for review.

*Decision adopted 7 June 2002*

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|----------------------------|---|
| <b>Case No.:</b>           | CH/98/1366  |
| <b>Applicant:</b>          | V.Č.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 9 March 2000  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serb nationality from Foča (Srbinje), the Republika Srpska. In June 1996 he was arrested in Sarajevo on account of charges of war crimes and genocide committed in 1992 against the Muslim civilian population of Foča. The indictment against him was transmitted to the Prosecutor of the ICTY only in April 1997. The Prosecutor expressed the view that the evidence presented to her was sufficient only to justify proceedings for unlawful confinement or imprisonment of civilians. The indictment was amended several times in order to bring it in line with the opinion of the Prosecutor. However, the final indictment contained charges that were not considered acceptable in the opinion of the Prosecutor. On 19 January 1998 the Cantonal Court in Sarajevo found the applicant guilty as charged and sentenced him to eleven years imprisonment. The appeals judgment of 16 June 1998 reduced the sentence imposed to nine years. In the meantime, the applicant was released on probation.

### **Admissibility**

The Chamber noted that the administration of justice is not among the matters within the competence of the State and therefore declared the application inadmissible insofar as it was directed against the State of Bosnia and Herzegovina as incompatible *ratione personae*. The Chamber rejected the argument made by the Federation that alleged violations of the Rules of the Road are within the exclusive competence of the ICTY and that the Chamber therefore has no jurisdiction over the applicant's case. The Chamber noted that there was no provision in the Rules of the Road, in the Statute of the ICTY or in its Rules of Procedure and Evidence to the effect that the ICTY was competent to adjudicate violations of the Rules of the Road. Recalling that it had in several previous cases examined violations of the Rules of the Road and found that they constituted violations of the Human Rights Agreement, the Chamber declared the application admissible insofar as it was directed against the Federation.

### **Merits**

#### *Article 5 of the Convention*

As in several previous cases, the Chamber found that the applicant's arrest and detention carried out without previously obtaining the opinion of the ICTY Prosecutor were in violation of the Rules of the Road and therefore unlawful. It concluded that there had been a violation of Article 5 paragraph 1 from the date of the applicant's arrest to the date of the opinion of the ICTY Prosecutor.

#### *Article 6 of the Convention*

In this case the Chamber was called to rule for the first time on the relationship between alleged violations of the Rules of the Road and the right to a fair trial, protected by Article 6. It held that the wording of the Rules of the Road in fact revealed that they were agreed on in order to prevent arbitrary arrests on groundless genocide and war crimes charges. Nevertheless, the Chamber found that, in order to fulfil their object and purpose, the Rules of the Road had to be interpreted as providing that criminal trials on such charges had to comply with the opinion given by the ICTY Prosecutor.

The Chamber found that the Cantonal Court convicted the applicant on charges that were not acceptable according to the opinion of the ICTY Prosecutor. With regard to the judgment of the Supreme Court, the Chamber concluded that “the ambiguous and contradictory stance taken by the Supreme Court in relation to the core argument of the applicant’s appeal and its failure to make a clear ruling on the applicant’s guilt under the charges excluded by the opinion of the ICTY Prosecutor is incompatible with the requirements of a fair trial. There had therefore been a violation of Article 6 paragraph 1.”

The Chamber found that the restrictions on the applicant’s contacts with his defence counsel during the first phase of his detention constituted a violation of his right to the assistance of a lawyer in the preparation of his defence, as protected by Article 6 paragraph 3(b) and (c). The Chamber found no violation of the applicant’s right to examine the witnesses against him and to obtain the attendance and examination of witnesses on his own behalf under the same conditions as the witnesses against him, as protected by Article 6 paragraph 3(d).

### **Remedies**

The Chamber ordered the Federation to grant the applicant a re-trial, in case he should lodge a petition to that effect. It further ordered the respondent Party to pay the applicant KM 4,000 as compensation for non-pecuniary damages suffered in connection with his eleven months of detention.

### **Dissenting Opinion**

Mr. Viktor Masenko-Mavi, joined by Mr. Mehmed Deković, attached a partly dissenting opinion in which he argued that the Chamber acted beyond the scope of its powers in issuing an order providing for a re-trial.

*Decision adopted 7 March 2000*  
*Decision delivered 9 March 2000*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it contested the admissibility of the application, the finding of a violation, and the compensation awarded. Finding that it did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance, the Chamber decided to reject the respondent Party’s request in respect of the finding that the application was admissible. However, in view of the fact that several other cases were pending before the Chamber to which this issue was relevant, the Chamber found that the whole circumstances justified reviewing the decision on the merits, and decided to accept the request for review in respect of the finding that there was a violation of the applicant’s rights. Given its decision to accept the request for review of the decision on the merits and that a different finding on the merits of the case might require a review of the compensation awarded, the Chamber also decided to accept the request for review in respect of the remedies ordered.

*Decision adopted 12 May 2000*

### **DECISION ON REVIEW**

In its decision on review, the plenary Chamber found, as the Second Panel had previously, that the Rules of the Road were binding on the Federation at the time when the applicant was arrested. The applicant’s arrest and detention in contravention of the Rules of the Road, being for that reason unlawful, therefore constituted a violation of Article 5 of the Convention. Since the applicant had been tried and convicted on charges not allowed by the ICTY Prosecutor, the plenary Chamber

endorsed the finding of the Second Panel that the judgment of the Sarajevo Cantonal Court, which had been wrongly upheld by the Federation Supreme Court, constituted a violation of Article 6 of the Convention. The plenary Chamber also accepted the Second Panel's finding that in view of severe restrictions placed on contacts between the applicant and his lawyer the criminal proceedings had not been impartial and fair.

Having endorsed the Second Panel's findings on the merits, the plenary Chamber ordered the Federation to take all necessary steps to grant the applicant a re-trial, should the applicant lodge a petition to this effect, and in that event to reopen the proceedings in their entirety but to limit the charges on which the applicant may be convicted to unlawful confinement or imprisonment of civilians. The Chamber also endorsed the order that the Federation pay the applicant KM 4,000 by way of compensation for the unlawful deprivation of his freedom.

Mr. Hasan Balić attached a dissenting opinion.

*Decision adopted 8 November 2000*

*Decision delivered 9 November 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/1373                           |
| <b>Applicant:</b>        | Aleksandar BAJRIĆ                    |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 10 May 2002                          |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant was arrested by the police of the Federation of Bosnia and Herzegovina for allegedly unlawfully possessing munitions after the car he was driving was stopped on 22 May 1996. The car was confiscated. The applicant's detention was thereafter extended several times at the request of the Municipal Prosecutor who allegedly was also investigating the applicant for war crimes. The applicant was finally released following an order of the Cantonal Court in Bihać of 24 March 1997 after the Municipal Prosecutor withdrew the charges of war crimes against the applicant. The charges related to the possession of munitions were dropped by the Court of First Instance in Sanski Most on 27 September 2000 as the Municipal Prosecutor indicated that he would no longer pursue the case. The applicant alleged that he had sustained heavy injuries as a result of severe beatings during his detention.

### Admissibility

Recalling *R.G. and Matković* the Chamber considered that no issue of admissibility arose under the six-month rule, as the application was submitted to the Human Rights Commission during the detention of the applicant and the six-month period had not at that stage begun to run. Furthermore the Chamber found that the respondent Party had failed to show that the remedies available to the applicant had any reasonable prospect of success. The application was therefore not inadmissible on the ground of non-exhaustion of domestic remedies. Finally, the Chamber noted that the applicant's factual allegations do not raise any issues with regard to Article 2 of the Convention, and therefore found this part of the application manifestly ill-founded. The Chamber declared the application admissible under Article 3 and 5 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article II paragraph 2(b) of the Human Rights Agreement.

### Merits

#### *Article 3 of the Convention*

Regarding the alleged maltreatment of the applicant during his custody, medical and other evidence led the Chamber to believe that the maltreatment had occurred. The Chamber found that the failure of the investigative judge to take any steps to investigate the allegations made by the applicant violated the positive obligation of the respondent Party to secure the applicant's rights as protected by Article 3.

#### *Article 5 of the Convention*

The Chamber did not find a violation for the period until 21 August 1996, as the suspicion of the respondent Party's authorities that the applicant had committed the criminal act of unlawfully possessing munitions was reasonable and as the respondent Party's decisions to hold the applicant in pre-trial detention fulfilled the requirements of Article 5 paragraph 1(c).

For the period after 21 August 1996 the respondent Party based its decision to hold the applicant in pre-trial detention on the suspicion that he had committed war crimes. The Chamber noted that the opinion of the ICTY prosecutor was only requested on 12 November 1996 and obtained on 10 March 1997. No order, warrant or indictment against the applicant had been preliminary submitted to the

ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules. Therefore the Chamber concluded that applicant's detention from 21 August 1996 until his release on 24 March 1997 was in violation of the "Rules of the Road" and Article 5 paragraph 1(c).

The Chamber further noted that Article 195 paragraph 1 and 2, and Article 4(a) of the Law on Criminal Procedure were not followed and concluded that the failure to appropriately bring the applicant before a judge in a timely fashion constituted a violation of Article 5 paragraph 3.

#### *Discrimination*

On the basis of Article II paragraph 2(b) of the Human Rights Agreement the Chamber considered if the applicant had suffered discrimination in the enjoyment of his rights as protected by Articles 3 and 5 of the Convention.

Concerning the violations of the rights of the applicant as guaranteed by Article 3, the Chamber recalled that the applicant was subject to verbal abuse, namely being called "Chetnik", while he was being physically abused. The Chamber was persuaded by this evidence that the applicant's perceived ethnicity was, in fact, at least a partial basis for the beatings he endured. The Chamber considered that the fact that he was treated to abusive language and treatment on the basis of his perceived religion and national origin constituted differential treatment for which there was no possible justification. The Chamber therefore found that he was subjected to discrimination in the enjoyment of this right.

Concerning the violations of the rights of the applicant as guaranteed by Article 5, on the basis of the evidence before it the Chamber could not find that the applicant's treatment in violation of Article 5(1) constituted discrimination.

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

The Chamber considered that in light of the fact that the respondent Party returned the car to the applicant's family after the confiscation, the issue had been resolved. Hence it was not necessary to examine the case under Article 1 of Protocol No. 1 to the Convention.

#### **Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to carry out an investigation into the conduct of the police and prison officials involved in the violation of the applicant's rights, with a view to initiating criminal proceedings against them in accordance with the law of the Federation of Bosnia and Herzegovina. After considering the seriousness of the violations, the Chamber found it appropriate to award the applicant a substantial amount of compensation for the non-pecuniary damages. The Chamber awarded KM 30,000. Additionally, the Chamber awarded on this sum ten per cent interest as of the date of the expiry of the time period set for the implementation of the present decision.

*Decision adopted 6 May 2002*

*Decision delivered 9 April 2002*

#### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the Chamber did not establish the facts correctly in respect to the question whether the applicant was brought promptly before an investigative judge and simply accepted the applicant's allegations without considering the minutes on the interrogation of the applicant before the investigative judge made on 22 May 1996. The Second Panel was of the opinion that the omission of the First Panel to discuss the relevance of the copy of the minutes gave rise to a right to review of this aspect of the decision, as the failure of the First Panel to consider an essential piece of evidence in relation to Article 5 paragraph 3 of the

Convention raised “a serious question affecting the ... application of the Agreement” as set out in Rule 64 paragraph 2 of the Rules of Procedure. The Second Panel also considered that the circumstances justified reviewing the decision.

The respondent Party further argued that the compensation of KM 30,000 ordered in the case is disproportionately high and that the findings of the violations should have been a sufficient satisfaction for the applicant as in the case of *Šljivo*. The Second Panel was of the opinion that the respondent Party had failed to show that in respect to the compensation the case raised “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”. Accordingly, the Second Panel was of the opinion that the request for review in this respect should be rejected. The plenary Chamber agreed with the recommendations of the Second Panel and decided to accept the respondent Party’s request for review insofar as it was directed against the finding of a violation of Article 5 paragraph 3 of the Convention.

*Decision adopted 12 July 2002*

## **DECISION ON REVIEW**

On review, the Chamber found that it could not be established on the basis of the facts and evidence before it that the applicant’s right as protected by Article 5 paragraph 3 of the Convention. It therefore decided, by 10 votes to 1, to set aside the earlier finding of a violation of that provision.

*Decision adopted on 7 December 2002*

*Decision delivered on 10 January 2003*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/98/1374                           |
| <b>Applicant:</b>        | Velimir PRŽULJ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 13 January 2000                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

In January 1997 the applicant, a Republika Srpska policeman, was arrested by the Federation police in the vicinity of the Inter Entity Boundary Line at Vraca, Sarajevo, on charges of genocide and war crimes. In the course of his arrest and on the way to the Novo Sarajevo police station, he was ill-treated by his captors. The following day the investigation was terminated and the applicant released. The applicant complained that he was still suffering from the psychological trauma of the violent arrest, and that he therefore had to abandon his job as a policeman.

The case was introduced by the applicant to the Human Rights Ombudsperson for Bosnia and Herzegovina on 26 March 1997. By a decision of 19 February 1998, the Ombudsperson decided to open an investigation into the applicant's case in relation to the possible violation of Articles 3 and 5 of the Convention. In the course of the investigation, the Ombudsperson had several contacts with the International Police Task Force, which had been involved in the applicant's release. Two representatives of the Ombudsperson's Office also visited the Hospital in Kasindo, the Republika Srpska, where they inspected the applicant's medical records. On 18 December 1998 the Ombudsperson referred the case to the Chamber.

### **Admissibility**

The Chamber rejected the argument of the Ombudsperson and the respondent Party that the case should be declared inadmissible because the applicant did not pursue any domestic remedies. The Chamber examined the domestic remedies indicated by the Ombudsperson and by the respondent Party and found that they were either insufficient to remedy the alleged violations or did not offer reasonable prospects of success under the circumstances. In particular, the Chamber found that the right to claim compensation for unlawful detention under the Federation Law on Criminal Procedure did not extend to damages for fear suffered, to honour and reputation and for health deterioration complained of by the applicant. The Chamber, therefore, declared the application admissible.

### **Merits**

#### *Article 5 of the Convention*

The Chamber found that the applicant's arrest had been unlawful as no arrest warrant or indictment against the applicant had been previously submitted to the Prosecutor of the ICTY, as required by the Rules of the Road.

#### *Article 3 of the Convention*

With regard to the allegations of ill-treatment, the Chamber held that, beyond the use of force possibly necessary for his arrest, the applicant was beaten by the Federation policemen during his transport to the Novo Sarajevo police station. This use of violence on the applicant amounted to inhuman and degrading treatment. The Chamber accordingly found a violation of Article 3.

## **Remedies**

The Chamber ordered the Federation (i) to carry out an investigation into the conduct of the arresting police officers, with a view to initiating criminal proceedings against them and (ii) to pay the applicant KM 3,000 by way of compensation for the fear and pain suffered. The Chamber reserved its decision on the applicant's claim for compensation for the alleged long-term psychological damage.

*Decision adopted 10 January 2000*

*Decision delivered 13 January 2000*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review, in which it contested the finding that the application was admissible, the finding of a violation of Article 3 of the Convention, and the amount awarded to the applicant as compensation. The Chamber found that the respondent Party's objections did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As the request did not meet the two requirements in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 5 April 2000*

## **DECISION ON FURTHER REMEDIES**

By its decision on admissibility and merits of 10 January 2000, the Chamber reserved its decision on the applicant's claims for compensation in relation to alleged permanent health damage suffered as a direct consequence of the ill-treatment he was subjected to during his arrest and detention in January 1997. Having reviewed further medical evidence, including the opinion of a medical expert appointed by the Chamber, the Chamber found that it could not be established that there was a casual link between the applicant's long-term medical condition and the treatment he suffered during his arrest and detention. The Chamber, therefore, rejected the applicant's claims for compensation for the alleged long-term health damage.

*Decision adopted on 5 July 2002*

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|--------------------------|-------------------|
| <b>Case No.:</b>         | CH/98/1495        |
| <b>Applicant:</b>        | Uroš ROSIĆ        |
| <b>Respondent Party:</b> | Republika Srpska  |
| <b>Date Delivered:</b>   | 10 September 1999 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant was granted a permanent occupancy right over an apartment in Prijedor, the Republika Srpska on 5 November 1992 by the holder of the allocation right. On 31 July 1997 and again on 8 September 1998 the Commission for the Accommodation of Refugees and Administration of Abandoned Property, a department of the Ministry for Refugees and Displaced Persons, declared the applicant to be an illegal occupant of the apartment and ordered him to vacate it within three days under threat of forcible eviction. On 29 August 1997 the applicant appealed the first decision. At the time of the Chamber's consideration, there had been no decision on this appeal, and the applicant remained in the apartment.

### **Admissibility**

Considering the non-suspensive effect of the appeal lodged by the applicant and the size of the fee he would have had to pay to initiate an administrative dispute before the Supreme Court, the Chamber concluded that no effective domestic remedy was available to him, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the decisions of the Commission for the Accommodation of Refugees and Administration of Abandoned Property constituted an interference with the applicant's right to respect for his home. Since the apartment was not entered into the register of abandoned property prior to being registered as abandoned property and allocated, as required by the Law on the Use of Abandoned Property, the Chamber found the interference not to be "in accordance with the law" within the meaning of Article 8 paragraph 2. Thus there was a violation of the applicant's rights as guaranteed by Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that the decisions ordering the applicant's eviction from the apartment were not "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1. Thus there was a violation of the applicant's rights as protected by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska to take all necessary steps to revoke the decisions of the Commission for the Accommodation of Refugees and Administration of Abandoned Property and to allow the applicant to enjoy undisturbed occupancy of the apartment in accordance with the terms of the new Abandoned Property Law.

*Decision adopted 7 July 1999*

*Decision delivered 10 September 1999*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/99/1568                           |
| <b>Applicant:</b>        | Bahra ĆORALIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 7 December 2001                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant has been a judge in Bihać since 1989. On 8 June 1995 she was abducted and badly beaten by three men. On 28 July 1995 these men were taken into custody on suspicion of committing the assault. Two of the arrested suspects were full cousins of the Chief of Police in Bihać, the third was his personal courier. They were released from custody on 5 September 1995. On 18 March 1999 they were convicted. On 1 October 1997 the applicant brought criminal charges before the Public Prosecutor's Office against the former Chief of Police in connection with the assault. However, he was never indicted. On 15 April 1998 the applicant filed an action for compensation against the three convicted men and the Chief of Police. There has been no final decision in this case to date.

### Admissibility

The Chamber found that the application, insofar as it referred to the assault of 8 June 1995 and the positive obligations of the respondent Party to protect the rights of the applicant that were allegedly violated by this assault, fell outside its competence *ratione temporis*. The Chamber noted that Article 6 did not indicate that the applicant, as a victim of a crime, had a viable claim under that Article. The Chamber therefore found this part of the application, concerning the criminal proceedings, inadmissible, as it was incompatible with the Agreement *ratione materiae*. The Chamber found that, as regards the applicant's complaints relating to the length of the civil proceedings before the domestic courts, there were no domestic remedies at the applicant's disposal which she could have been required to exhaust. In sum, the Chamber concluded that the application should be accepted and examined on its merits insofar as it concerned the applicant's complaint of a violation of her human rights in light of the allegedly unreasonable length of the civil proceedings.

### Merits

#### Article 6 of the Convention

The Chamber noted that the civil proceedings had been pending for three years and nine months and were still ongoing, and that the case was not so complex as to justify such a long delay. The Chamber found that there did not appear to be any conduct on the part of the applicant which could be considered to have contributed to the delay in the proceedings, but rather that the delays were due to incompetence and inefficiency on the part of the authorities.

Considering that the delay in the civil proceedings was entirely due to the conduct of the Municipal Court, for which the respondent Party was to be held responsible, the Chamber found that the length of time that the applicant's proceedings had been pending before the courts of the respondent Party was unreasonable and that the applicant's right to a fair trial within a reasonable time in the determination of a civil right guaranteed by Article 6 paragraph 1 had been violated.

### Remedies

The Chamber ordered the Federation to take all necessary steps to ensure that the applicant's proceedings before the Municipal Court were decided upon expeditiously and in accordance with the

applicant's rights. The Chamber also ordered the Federation to pay to the applicant KM 5,000 by way of compensation for non-pecuniary damage.

*Decision adopted 7 November 2001*

*Decision delivered 7 December 2001*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that (a) when finding a violation of Article 6 paragraph 1 of the Convention with regard to the length of the civil proceedings, the Chamber did not take into consideration the fact that the court decided to suspend the proceedings in expectation of the outcome of the criminal proceedings; and (b) in line with its case-law, the Chamber should not have awarded the applicant any compensation. The Chamber found that the respondent Party's objections did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As the request did not meet the two requirements in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 9 May 2002*

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| <b>Case No.:</b>         | CH/99/1714                           |
| <b>Applicant:</b>        | Mladen VANOVA                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 8 November 2002                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

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

The applicant alleged a violation of his right to a fair hearing under Article 6 of the Convention. He further alleged that he had been discriminated against in the enjoyment of the right to work on the basis of his Serb origin and place of residence under Articles 6 and 7 of the ICESCR.

### Admissibility

The Chamber noted that the applicant's complaints related partially to events that occurred before 14 December 1995, when the Agreement entered into force. Accordingly, the Chamber declared inadmissible as incompatible *ratione temporis* with the Agreement the parts of the application that related to events that occurred before 14 December 1995.

The respondent Party objected to the admissibility of the application on the ground of non-exhaustion of domestic remedies. However, the Chamber held that the applicant's employment status was terminated by force of law on 5 May 2000. Article 143 of the Law on Labour terminates the working relations of all employees still on the waiting list on that date, without exception. Accordingly, the applicant has no remedy available that he could be required to exhaust to obtain a decision from the courts or the Commission allowing him to resume work. In any case, the applicant had pursued his case through the domestic court system and even obtained a lower court judgement in his favour. On appeal, however, his court proceedings were suspended and his case referred to the Cantonal Commission. Under the circumstances, there were no additional effective domestic remedies that the applicant could be required to pursue.

### Merits

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

The Chamber held that the acts and omissions possibly implicating the responsibility of the Federation under the Agreement included the failure to re-employ the applicant after the end of the armed conflict and the attempted hiring of others for a position the applicant previously held. The Chamber found that these acts affected the applicant's enjoyment of the rights guaranteed by Articles 6(1) and 7(a)(i) and (ii) of the ICESCR. The Chamber therefore went on to examine whether the Federation had secured protection of these rights without discrimination.

In this respect, the Chamber found that the applicant had been subjected to differential treatment in comparison with persons of different ethnic origin. There was no evidence that the applicant's

treatment was objectively justified by law either during or after the armed conflict. The Chamber concluded therefore that the Federation authorities, through PTT, actively discriminated against the applicant due to his Serb origin. This violation had been corrected by the Municipal Court II, but was subsequently perpetuated by the Cantonal Court's procedural decision suspending the court proceedings. The applicant had therefore been discriminated against in the enjoyment of his right to work, and to just and favourable conditions of work, as defined in Articles 6 and 7 of the ICESCR.

#### *Article 6 of the Convention*

As to the length of proceedings the Chamber noted that applicant initiated court proceedings on 30 October 1996 and received a favourable judgement from the Municipal Court II on 4 December 2000. On appeal, however, the Cantonal Court suspended the proceedings and referred the case to the Cantonal Commission on 26 October 2001. The case remained pending before the Commission, and no further action was taken in the proceedings.

Recalling the criteria as laid down by the Chamber for assessing the reasonableness of the length of proceedings, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case, the Chamber held that the legal issues in the underlying case were not overly complex and there was no indication that the length of the proceedings could be imputed to the applicant. Nor had the respondent Party provided any explanation from which it would appear that the delays should not be imputed to the judicial authorities of the respondent Party itself. The fact that the applicant's case was pending for more than four years without any decision establishes a violation of the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1 of the Convention. The violation was compounded by the suspension of the applicant's case by the Cantonal Court.

As to the applicant's complaint of right of access to the courts, the Chamber held that the decision of the Cantonal Court of 26 October 2001 left the applicant with no access to court. While his case remained pending before the Cantonal Commission, the applicant had no expectation that the courts would resolve his main complaint, but only that the Cantonal Commission would decide this case. The Cantonal Commission could only order a statutorily prescribed level of compensation and is not competent to order the applicant's reinstatement or decide his discrimination claims. The same is true of the Federal Commission, the venue for direct appeal of the Cantonal Commission's decision. In addition, the Chamber held that it was not clear what judicial review of the Cantonal or Federal Commission's decision, if any, would be available. The Supreme Court of the Federation of Bosnia and Herzegovina had made it clear that the Commission's decisions are not subject to judicial review under regular administrative dispute procedures. While the Supreme Court stated that the Commission's decisions should be subject to review by competent courts under the laws on civil procedure, it is not apparent that such review would be of any value to the present applicant. At best, the applicant could bring his claim anew in the Municipal Court. It appears, however, that the courts, following the law, could only uphold or repeat the referral of his case to the Cantonal Commission, and the applicant would have no prospect of reinstatement or determination of his discrimination claims. Under the circumstances, the Chamber concluded that the respondent Party had violated the applicant's right of access to court as guaranteed by Article 6 paragraph 1 of the Convention.

#### **Remedies**

The Chamber ordered the Federation to undertake immediate steps to ensure that the applicant is no longer discriminated against in his right to work and to just and favourable conditions of work, and that he be offered the possibility of resuming his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position. The Chamber further ordered the Federation to pay to the applicant, by way of compensation, the sum of 15,000 Convertible Marks to cover both pecuniary and non-pecuniary damages and to pay to the applicant on the first day of each month 300 KM, starting on 1 December 2002, until he is offered the possibility to resume his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position.

*Decision adopted 4 November 2002*  
*Decision delivered 8 November 2002*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the Chamber neglected the fact that, on 1 October 2002, the Cantonal Commission issued a procedural decision rejecting the appeal of the applicant and ordering that the case be returned to the Municipal Court II in Sarajevo. The respondent Party also challenged the finding of discrimination, arguing that the Chamber failed to adequately assess the issue of differential treatment in relation to others and whether there was some justification for the differential treatment. The Federation further argued that the Chamber failed to connect the discrimination to any substantive material provision of the Convention and that the Chamber's conclusions regarding the finding of discrimination are arbitrary. With regard to the factual findings in the case, the Federation asserts that the Chamber has infringed upon the domain of the domestic courts. Finally, the respondent Party argued that the application should have been rejected as ill-founded or a misuse of the right of petition because the applicant withheld information from the Cantonal Commission. In relation to the remedies, the respondent Party argued that the Chamber should not award compensation in this case, citing the Chamber's decision in *Čuturić*.

The Chamber was of the opinion that the respondent Party's arguments regarding the Cantonal Commission could have been invoked during the proceedings before the Second Panel, which considered the admissibility and merits of the case. Specifically, the respondent Party failed to apprise the Chamber, prior to its 4 November 2002 decision, of the 1 October 2002 procedural decision of the Cantonal Commission, on which the respondent Party now relies. However, the Chamber went on to state that it did not, as a consequence, now consider that in this respect "the whole circumstances justify reviewing the decision". The Chamber was further of the opinion that the other grounds upon which the respondent Party's request for review is based were in essence already properly examined and rejected by the Second Panel when it considered the admissibility and merits of the case. In relation to compensation, the Chamber considered that the decision in *Čuturić* had no bearing on the issues in this case. The Chamber therefore considered that the request for review did not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required by Rule 64(2)(a).

*Decision adopted on 7 February 2003*

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|--------------------------|-------------------|
| <b>Case No.:</b>         | CH/98/1785        |
| <b>Applicant:</b>        | Milomir RADULOVIĆ |
| <b>Respondent Party:</b> | Republika Srpska  |
| <b>Date Delivered:</b>   | 10 December 1999  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina who occupies a house in Banja Luka in accordance with an authorisation of the owner of the house, which was certified on 30 September 1994 by the Municipal Secretariat for General Administration. On 14 December 1996, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka, a department of the Ministry for Refugees and Displaced Persons, issued a decision under the old Abandoned Property Law declaring the applicant to be an illegal occupant and ordering him to vacate the house within three days, under threat of forcible eviction. The applicant received this decision on 17 December 1998 and on the following day appealed to the Ministry for Refugees and Displaced Persons on the basis that he could not be considered to be an illegal occupant of the house as he occupied it with the written consent of the owner. At the time of the Chamber's consideration, the applicant had not received any response to this appeal, and he still occupied the house.

### **Admissibility**

Considering the non-suspensive effect of the appeal lodged by the applicant and the fact that the respondent Party did not seek to argue that there was any effective remedy available to the applicant, the Chamber concluded that no such remedy was available to him, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property ordering the applicant's eviction constituted an "interference by a public authority" with his right to respect for his home. Noting that the old Abandoned Property Law requires a property to be entered into the register of abandoned property before it can be reallocated, but that no such entry was made in respect of the house in question, the Chamber found that the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property was not "in accordance with the law" within the meaning of Article 8 paragraph 2. Thus there was a violation of Article 8.

### **Remedies**

The Chamber ordered the Republika Srpska to revoke the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of the authorisation of the owner of the house.

*Decision adopted 4 November 1999*

*Decision delivered 10 December 1999*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/98/1786       |
| <b>Applicant:</b>        | Muharem ODOBAŠIĆ |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 5 November 1999  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, who is of Bosniak origin, lives in Prnjavor, the Republika Srpska. He was a judge in Prnjavor until November 1992, when he was removed from his position. On 14 September 1996, the day of the first national elections after the war, he was arrested by Mr. Braco Milijašević, who was at that time a police officer. The reason given for his arrest was that he had failed to comply with a request to identify himself to Mr. Milijašević. During his detention he was physically and verbally abused. He was subsequently convicted by the Petty Offences Court in Prnjavor of failure to provide identification and of failure to accompany a police officer to a police station. He was sentenced to 20 days in prison and ordered to pay the costs of the proceedings. During the trial, Mr. Milijašević sought to intimidate the judge, the applicant's representative and trial observers from the international community by inflammatory and threatening remarks. The trial judge did not react to this threatening behaviour. On appeal the sentence of imprisonment was reduced to a fine. The applicant submitted two applications, on 28 October 1996 and 9 July 1997, respectively, to the Human Rights Ombudsperson, who issued reports on 4 March 1997 and 29 September 1998, respectively, finding that the facts revealed violations of Articles 3, 5(1) and 6 of the Convention.

### **Admissibility**

Noting that the six-month rule did not establish any time-limit for the initiation of proceedings before the Chamber by the Human Rights Ombudsperson, and that the applicant had exhausted all domestic remedies available to him, the Chamber declared the application admissible.

### **Merits**

#### *Article 3 of the Convention*

The Chamber held that the applicant had been subjected to serious physical and verbal abuse by the police during his detention. This included being beaten on the chest after he informed Mr. Milijašević that he had a heart condition. This treatment violated the applicant's right to freedom from inhuman and degrading treatment as guaranteed by Article 3.

#### *Article 5 of the Convention*

The Chamber found that the sole reason for the arrest and detention of the applicant was to harass and intimidate him because of his religion and ethnic origin and was thus a violation of Article 5.

#### *Article 6 of the Convention*

The Chamber found that during the applicant's trial before the Petty Offences Court in Prnjavor, the Court had essentially tolerated the threatening and intimidating behaviour of Mr. Milijašević before it. This lack of reaction by the court deprived the proceedings of the appearance of fairness, in violation of Article 6.

*Discrimination*

The Chamber held that the applicant had been discriminated against in his enjoyment of the above rights and also in the enjoyment of his right to security of person and State protection against bodily harm caused by, amongst others, Government officials, as guaranteed by Article 5(b) of the CERD. This treatment constituted discrimination because he was subjected to differential treatment solely on the basis of his national origin.

**Remedies**

The Chamber ordered the Republika Srpska to pay the applicant KM 3,500 in compensation for moral damage. It also ordered the Republika Srpska to conduct an investigation into the conduct of Mr. Milijašević with a view to initiating criminal proceedings against him in accordance with the law of the Republika Srpska.

**Dissenting Opinion**

Mr. Vitomir Popović attached a partly dissenting opinion in which he argued that the Chamber should have refused the applicant's claim for compensation as premature for non-exhaustion of domestic remedies; that the Chamber's finding of a violation of the applicant's human rights represented adequate satisfaction; and that the compensation awarded was inappropriately high.

*Decision adopted 2 November 1999*

*Decision delivered 5 November 1999*

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|--------------------------|------------------|
| <b>Case No.:</b>         | CH/99/1859       |
| <b>Applicant:</b>        | Ruža JELIČIĆ     |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 11 February 2000 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

Ms. Jeličić, a citizen of Bosnia and Herzegovina, is the holder of various foreign currency savings accounts with Banjalučka Banka d.d., a bank registered in the Republika Srpska. On 26 November 1998, she obtained a decision of the Court of First Instance in Banja Luka, ordering the bank to pay to her the sums she holds in those accounts, but the decision was not enforced.

### **Admissibility**

The Chamber declared the application admissible, as it established that there was no remedy available to her in the legal system of the Republika Srpska against the failure of the authorities to enforce the decision of the court in her favour.

### **Merits**

#### *Article 6 of the Convention*

The Chamber concluded that the failure to enforce the decision of the Court of First Instance in the applicant's favour, which was a final and binding decision, constituted a violation of her right to a fair hearing in the determination of her civil rights, as guaranteed by Article 6 paragraph 1.

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

The Chamber concluded that the failure of the authorities of the Republika Srpska to enforce the court decision in the applicant's favour constituted a violation of the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Republika Srpska, without further delay, to ensure the full enforcement of the decision of the Court of First Instance in Banja Luka.

*Decision adopted 12 January 2000*

*Decision delivered 11 February 2000*

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|--------------------------|--------------------------------------|
| <b>Cases Nos.:</b>       | CH/99/1900 and CH/99/1901            |
| <b>Applicants:</b>       | D.Š. and N.Š.                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 April 2002                        |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

On 23 September 1995 the applicants, both officers of the Army of the Republika Srpska, were arrested and detained by members of the Army of the Republic of Bosnia and Herzegovina. They were held in detention as prisoners of war until their release on 4 August 1997. The applicants alleged that during their detention they were severely and repeatedly maltreated. The cases were referred to the Chamber on 13 April 1999 by the Ombudsperson, after an attempt to find a friendly settlement promoted by the Ombudsperson had failed.

### **Admissibility**

The Chamber recalled that it had no competence *ratione temporis* to review alleged violations occurring before 14 December 1995. The Chamber concluded that it lacked competence to review the applicants' arrest and detention prior to 14 December 1995, but could review violations of their rights occurring between 14 December 1995 and the end of their detention on 4 August 1997. Acknowledging that the applicants had a domestic remedy of requesting compensation for illegal detention under Law on Criminal Procedure, the Chamber observed that the respondent Party failed to provide evidence of the effectiveness of this remedy and failed to demonstrate that it had been used successfully in the past. Since the available remedies were not shown to be effective, the Chamber declined to declare the cases inadmissible for non-exhaustion of domestic remedies. Applying its six-month rule, the Chamber declared the parts of the applicants' complaint raised with the Ombudsperson within six months of the violation admissible. However, it found the complaints under Articles 3, 8, 9, 12, and 13 of the Convention inadmissible, since they were not present in the original complaint to the Ombudsperson, but were added to the application later, more than a year after the violations.

### **Merits**

#### *Article 5 of the Convention*

The Chamber observed that the applicants' claims had to be considered in light of their prisoner of war status and of Article IX of Annex 1A of the General Framework Agreement, which regulated the treatment of war prisoners. The Chamber also noted that the applicants stayed in detention significantly longer than all other prisoners of war at their camp, that their names did not appear in the lists of war prisoners, and that they were hidden from the proper authorities. While detention may have been justified in the direct aftermath of the hostilities by the exigencies of war, they were not justified for such a long time. The Chamber held that the detention of the applicants from the beginning of March 1996 to 4 August 1997 constituted a violation of their right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement. The Chamber further considered that it was not necessary to examine whether the applicants had been discriminated against in the enjoyment of their rights as guaranteed by Article 5 of the Convention.

## **Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to pay to each applicant the sum of KM 25,000 by way of compensation for non-pecuniary damage.

*Decision adopted 6 March 2002*

*Decision delivered 12 April 2002*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it complained that the amount of compensation awarded for non-pecuniary damages was not proportional to the amount of compensation awarded in other similar decisions the Chamber had already issued. The Chamber found that the respondent Party's objection did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. In addition, the Chamber found that the whole circumstances of the case did not justify reviewing the decision. As the request did not meet the conditions set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 6 June 2002*

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|--------------------------|------------------------|
| <b>Case No.:</b>         | CH/99/1951             |
| <b>Applicants:</b>       | Dušan and Petar SPREMO |
| <b>Respondent Party:</b> | Republika Srpska       |
| <b>Date Delivered:</b>   | 6 December 2002        |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The case concerns the applicants' illegal eviction from their business premises in Zvornik in 1996 and their subsequent attempts to regain possession through court proceedings. After almost four years, the applicants received a final decision reinstating them into their business premises. The applicants allege violations of their right to property, their right to a fair trial within a reasonable time before an impartial tribunal, and discrimination in the enjoyment of these rights.

The applicants are father and son. The first applicant entered into a contract with the Football Club "Drina" in Zvornik for the lease of the business premises, while the second applicant is also named as he ran the business concerned together with his father.

### **Admissibility**

The applicants complained that they were discriminated against by supporters of the ruling Serb Democratic Party in Zvornik and for this reason, they were illegally evicted from their business premises by the new directors of the Football Club Steering Board, and further were the victims of an unfair trial as the trial judge was allegedly given their case as he would issue a decision in line with the ruling SDS party. However, the Chamber found that the domestic court system effectively set aside the previous judgment and remedied the applicants' primary complaint, the deprivation of their business premises. Therefore, the Chamber considered that it was not necessary for it to continue to examine these parts of the application, and this result is consistent with the objective of respect for human rights. The Chamber therefore decided to strike out the parts of the application related to the alleged violations of Article 6(1) of the Convention, lack of impartial tribunal, Article 1 of Protocol No. 1, concerning the right of possessions and discrimination.

As to the claim for compensation, the Chamber held that the applicants had failed to display that domestic remedies would be ineffective. Accordingly, the Chamber declared this part of the application inadmissible for non-exhaustion of domestic remedies.

As to the length of the proceedings under Article 6(1) of the Convention, the Chamber found that no other grounds for declaring the application inadmissible had been raised. Accordingly, the Chamber declared the application in this respect admissible.

### **Merits**

#### *Article 6(1) of the Convention*

Finding that the applicants' complaint concerned the determination of a civil right, the Chamber held that the complaint fell within the ambit of Article 6(1).

Recalling the criteria as laid down by the Chamber for assessing the reasonableness of the length of proceedings, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case, the Chamber held that the legal and factual issues in the underlying case were not overly complex and there was no indication that the length of the proceedings could be imputed to the applicant. The Chamber noted that the proceedings lasted approximately three and a half years and during that period there had been four court decisions

issued. The applicants alleged that had it not been for the biased judgment issued in November 1997, they would have been able to use their business premises two and half years earlier. The Chamber found that whilst this may have been true, the applicants were obligated to use the available domestic remedies. Upon appeal, they were successful in regaining the use of their property. The nature of the appeal system requires that there be some delay in obtaining a final judgment, and the Chamber does not find that this delay was excessive. Accordingly, in light of the special facts of the case the Chamber held that the proceedings were not excessively long and that there was no violation of Article 6(1) of the Convention, in that regard.

*Decision adopted 5 November 2002*

*Decision delivered 8 December 2002*

|                            |   |
|----------------------------|---|
| <b>Case No.:</b>           | CH/99/1961  |
| <b>Applicant:</b>          | Azra ZORNIĆ   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and Republika Srpska |
| <b>Date Delivered:</b>     | 8 February 2001   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina, to regain possession of an apartment located in Dobrinja, Sarajevo. She holds the occupancy right over it and occupied it together with her family until 1992, when she was forced to vacate it due to the hostilities. The applicant maintained that although the area in which the apartment is located was, *de jure*, according to the Dayton Peace Agreement, part of the Federation. However, it was, *de facto*, under the control of the Republika Srpska. The area in question, along the Inter-Entity Boundary Line, was disputed between the Federation and the Republika Srpska. The applicant claimed that this situation resulted in her being unable to regain possession of her apartment. She initiated administrative proceedings before the relevant authorities of the Federation and the Republika Srpska. The applicant currently occupies a different apartment in the Federation which is the subject of proceedings by the pre-war occupant, who holds the occupancy right over it, to regain possession of it.

### Admissibility

First, noting that the State did not object to the admissibility of the application against it on any ground, the Chamber declared the application admissible as against the State. Second, the Chamber found that, regardless of whether the area where the applicant's apartment is located is in fact on the Republika Srpska side of the Inter-Entity Boundary Line, the responsibility of the Republika Srpska was engaged by virtue of its effective control of that area. Finding that the remedies available to the applicant in the Republika Srpska could not be considered to have been effective in the present case, the Chamber declared the application admissible as against the Republika Srpska. Third, noting that the Federation requested the Chamber to declare the case admissible as against all three respondent Parties, the Chamber declare the case admissible as against the Federation also.

### Merits

#### *Article 8 of the Convention*

First, noting that the limited and clearly defined scope of responsibilities of the State as currently set out in its Constitution does not include the matters raised in the application, the Chamber considered that it should not hold the State responsible for any violation of the rights of the applicant under Article 8.

Second, the Chamber found that the applicant was unable to regain possession of her apartment due to the failure of the authorities of the Republika Srpska to deal effectively with her application before the authorities, and thus that the Republika Srpska was responsible for an interference with the right of the applicant to respect for her home. Given that the new Abandoned Property Law requires that the relevant authority issue a decision on an applicant's request within 30 days of its receipt, and that the authorities issued a decision on the applicant's request more than one year later, the actions of the authorities of the Republika Srpska were not "in accordance with the law." Thus there was a violation by the Republika Srpska of the right of the applicant to respect for her home as guaranteed by Article 8.

Third, the Chamber noted that the obligation of the Federation to secure the applicant's right to respect for her home requires it to not only put in place a legislative regime enabling persons who lost possession of their homes to regain possession of them, but also to ensure that it acts in accordance with that regime in individual cases. The Chamber further noted that the Federation had not done so, as the applicant's proceedings were still pending, despite the legal time-limits for the issuance of a decision having elapsed. Thus the Chamber considered that the Federation had failed to comply with the positive obligation imposed upon it by Article 8 and that it had violated the rights of the applicant under this provision.

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

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that the State could not be held responsible for any violation of the rights of the applicant under Article 1 of Protocol No. 1, but that both the Federation and Republika Srpska had violated the right of the applicant to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Republika Srpska swiftly to take all necessary steps to enable the applicant to regain possession of the apartment and to pay to the applicant KM 2,000 by way of compensation for moral damage suffered. The Chamber ordered the Federation to pay the applicant KM 1,000 by way of compensation for moral damage.

**Separate/Dissenting Opinions**

Mr. Manfred Nowak, joined by Mr. Dietrich Rauschnig and Mr. Hasan Balić, attached a separate opinion in which he argued that the Chamber should have addressed the question of the location of the Inter-Entity Boundary Line. He argued that the *de facto* occupation of parts of Federation territory by the Republika Srpska was a violation of the Dayton Peace Agreement, and had deprived the applicant of her right to have the competent authorities, i.e. Federation authorities, decide on her claim to regain possession of her apartment and to enable her to return to it. Thus the Republika Srpska was primarily responsible for the violations of the applicant's rights. Most importantly, Mr. Nowak found it unacceptable that none of the three Parties had taken any effective steps to bring about a solution to this territorial dispute. This passivity had led to a situation where the applicant was deprived of her right to an effective remedy and thus a violation by all respondent Parties of the applicant's right to an effective remedy under Article 13 of the Convention.

Mr. Viktor Masenko-Mavi attached a dissenting opinion in which he argued that as the matters complained of by the applicant were clearly within the responsibility of the State, the State should have been found responsible for the violations of the applicant's rights. On the other hand, Mr. Masenko-Mavi argued that the Chamber should not have found the Federation responsible, as it had taken no action indicating a violation of the applicant's rights and had no competence for the reinstatement of the applicant in an apartment located in an area controlled by the Republika Srpska.

Mr. Mato Tadić and Mr. Želimir Juka joined Mr. Masenko-Mavi's dissenting opinion insofar as it referred to the responsibility of the State.

*Decision adopted 9 January 2001*

*Decision delivered 8 February 2001*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/99/2028                           |
| <b>Applicants:</b>       | Nened CRNOGORČEVIĆ                   |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 October 2002                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicant's father concluded a purchase contract in 1992 with the Yugoslav National Army for an apartment at Grbavička 66 in Sarajevo. The applicant (and his brother) inherited the apartment after the death of their parents. Neither the applicant nor his father obtained registration as the owners of the apartment with the court register. Shortly after the applicant's mother's death in 1998, military housing authorities initiated eviction proceedings against the applicant. The applicant alleges that these eviction proceedings and the refusal of the military authorities to issue the order necessary for the applicant's registration as the owner of the apartment violate his right to peaceful enjoyment of property, protected by Article 1 of Protocol No. 1 to the Convention.

### **Admissibility**

The respondent Party objected to the admissibility of the application on the grounds that the applicant failed to exhaust available domestic remedies. However, the Chamber held that the applicant had availed himself of domestic remedies to confirm his rights as one of the inheritors and to request from the Federal Ministry of Defence an order to register his ownership rights over the apartment in question. In accordance with Article 39a of the Law on the Sale of Apartments with an Occupancy Right, such an order is a pre-condition for the registration of ownership. The domestic remedies suggested by the respondent Party would not have advanced the applicant's cause any further and thus are irrelevant. Consequently, the Chamber considered all available and effective remedies exhausted.

The respondent Party further objected to the admissibility of the application under the six-month rule as the "final decision" for the purposes of the six-month rule took place on 26 January 1996, the date of the entry into force in the Republic of Bosnia and Herzegovina of the Decree with Force of Law on the Amendments to the Law on Transfer of Resources of the former SFRY. However, the Chamber held that up until the death of his mother in 1998, the applicant had no rights to pursue and he established his rights as an inheritor on 2 April 1999. On 31 March 1999 the military authorities requested the applicant to vacate the apartment and his application was filed on 8 April 1999, less than ten days after the request to vacate was received. In addition, since the applicant is still unable to register ownership of the apartment, the Chamber considered the respondent Party's actions to be an ongoing interference and therefore rejected the respondent Party's objection.

### **Merits**

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

The Chamber noted that on 18 March 1992, the applicant's father concluded a purchase contract for the apartment with the former SFRY Federal Secretariat for National Defence – Military Board for Civil Engineering and he fulfilled his contractual obligations; therefore, he became entitled to ownership of the apartment. Were he still alive, the applicant's father could apply to the Federal Ministry of Defence to register his ownership rights to the apartment in question, pursuant to Article 39a of the Law on the Sale of Apartments with an Occupancy Right.

The Chamber next examined whether a right to register ownership of an apartment was a possession for the purposes of Article 1 of Protocol No. 1 to the Convention. It noted that registration of

ownership merely confirms the applicant's legal rights over the apartment that had already been recognised as his inheritance. Accordingly, such registration amounts to a valuable economic benefit and recognition of an existing right.

Recalling its previous jurisprudence and the application of Article 39a of the Law on the Sale of Apartments with an Occupancy Right, the Chamber considered that the rights of the applicant's father under his contract of purchase for the apartment in question constituted "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. Pursuant to the procedural decision on inheritance of the Municipal Court in Sarajevo of 2 April 1999, the applicant inherited all rights and obligations under the purchase contract.

The Chamber considered that the failure of the authorities to allow the applicant to register ownership of the apartment constituted an interference with his right to peaceful enjoyment of his possessions. This interference was ongoing as the applicant was unable to register himself as the owner of the apartment. In addition, the eviction proceedings against the applicant also constituted an additional interference with the peaceful enjoyment of property. Moreover, since the respondent Party interfered with the applicant's "possession" contrary to the conditions provided by law, the Chamber did not need to consider whether these actions were in accordance with the public interest. The Chamber concluded that the respondent Party violated the applicant's right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### **Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to prevent the eviction of the applicant and to allow the applicant to be registered as the owner of the disputed apartment.

*Decision adopted 7 October 2002*

*Decision delivered 11 October 2002*

Editors note: A request for review was rejected by the Chamber on 7 February 2003

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/99/2030 et al.   |
| <b>Applicants:</b>         | Milka RUDIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 11 January 2002   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

Rudić and twelve other applicants sought to regain possession of their apartments or houses in Sarajevo, Municipalities Novo Sarajevo, Novi Grad, Centar or Ilidža. All the applicants lodged applications with the CRPC which issued decisions confirming that they were the pre-war occupancy right holders or the *bona fide* possessors of the respective properties on 1 April 1992. However, the competent authorities failed to execute those decisions.

### Admissibility

The Chamber found the complaints against Bosnia and Herzegovina inadmissible *ratione personae*, since returning property to pre-war occupants or owners was not within the state's competence. As against the Federation of Bosnia and Herzegovina, the Chamber considered the applicants' attempts to secure domestic remedies and found that further actions in the domestic fora were unlikely to succeed. In addition, the Chamber stated that an unobserved application to the Ombudsman was inadequate grounds for inadmissibility *lis alibi pendens*. The Chamber found the discrimination claims manifestly ill-founded and inadmissible due to lack of evidence supporting those allegations, but declared the other aspects of the applications admissible against the Federation of Bosnia and Herzegovina.

### Merits

#### Article 8 of the Convention

The Chamber found that the applicants' apartments were their "homes" within the meaning of Article 8. The Chamber also held that Article 8 created a positive obligation not just to pass legislation ensuring respect for home, but also to implement such laws. The Chamber then held that failure to enforce the decision of the CRPC to reinstate the applicants in their apartments was an ongoing interference with the right to one's home, that it was not "in accordance with the law" and that it therefore violated Article 8.

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

Observing that applicants' occupancy rights were valuable assets held indefinitely, the Chamber relied on its prior decisions to affirm that the applicants' apartments were "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. The Chamber held that failure to enforce the CRPC decisions was an ongoing interference in violation of the applicants' right to the peaceful enjoyment of possessions under Article 1.

#### Articles 6 and 13 of the Convention

The Chamber did not consider it necessary to examine the cases under Articles 6 and 13 in view of its finding of violations of other Articles.

## **Remedies**

The Chamber ordered the Federation to reinstate the applicants into possession of their apartments and houses immediately and in any event no later than one month after the date on which the decision became final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. Further, the Chamber ordered the respondent Party to pay to each of the applicants the sum of KM 1,200 in recognition of their suffering as a result of their inability to regain possession of their apartments or houses in a timely manner. The Chamber also ordered the respondent Party to compensate the applicants for the loss of use of their homes and any extra costs for each month they have been forced to live in alternative accommodation. The Chamber considered it appropriate that this sum should be KM 200 per month and payable from the expiration date for the competent administrative organ to issue a conclusion on the permission of enforcement of the CRPC decision. This sum should continue to be paid at the same rate until the end of the month in which the applicants regain possession of their apartments or houses.

*Decision adopted 7 December 2001*

*Decision delivered 11 January 2002*

## **DECISIONS ON REQUESTS FOR REVIEW**

The respondent Party submitted a request for review in which it complained that (a) two orders in the decision were incompatible: the First Panel order to pay the applicants for each further month the applicants remained excluded from their apartments or houses and the order to enable the applicants' reinstatement at the latest one month after the date on which the decision became final and binding; (b) the First Panel did not decide to strike out six cases in which the applicants had been reinstated before the decision was delivered; and (c) that the orders for compensation were excessive. The Chamber found that the respondent Party had failed to give any grounds as to why the issues referred to in the request for review would raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance". As the request for review failed to meet the first of the two requirements set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 7 March 2002*

The applicant, Verica Simić, case no. CH/99/2544, submitted a request for review challenging the Chamber's decision on the grounds that (a) she was not granted any compensation for her claimed travel expenses, her destroyed movable property and fixtures (b) the Chamber did not find a violation of her right not to be discriminated against and (c) the Chamber rejected her request to order the respondent Party, as a provisional measure, to make an inventory list. The Chamber found that the grounds upon which the applicant's request for review was based were in essence already examined and rejected by the First Panel when it considered the case. Furthermore, the Chamber found that the applicant had failed to give any grounds as to why the issues referred to in the request for review would raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance". As the request for review failed to meet the first of the two requirements set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 7 February 2002*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/99/2150                           |
| <b>Applicant:</b>        | Đorđo UNKOVIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 November 2001                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina of Serb ethnic origin, is a pensioner living in Sarajevo. At the beginning of the war, the applicant's daughter and her husband and two children (the "Golubović family"), all of Serb ethnic origin, were living in Konjic in the Federation. The applicant lost contact with his daughter and her family in the summer of 1992. Thereafter, the applicant heard rumours that his daughter's family had been killed, but he did not receive any official information to confirm such rumours. In January 1999, the applicant learned from the newspapers that two men had been arrested for killing his daughter's family in Konjic at the beginning of July 1992. The applicant complained that the authorities of the respondent Party wilfully withheld information from him from 1992 through 1999 concerning his daughter's fate and that this has caused him "mental suffering, pain and sorrow." He also claimed compensation for personal property allegedly stolen by the perpetrators at the time of the killings.

### **Admissibility**

The Chamber found that the applicant had not exhausted domestic remedies with respect to his claim for pecuniary compensation for the missing property of his daughter's family, as he did not raise his property law claim in the criminal proceedings against the men charged with the murders and did not pursue civil proceedings against these men or against the Federation. The Chamber thus declared the part of the application concerning the claim for pecuniary compensation for the missing property of his daughter's family inadmissible.

However, the Chamber found that the same reasoning did not apply to the applicant's claim for non-pecuniary compensation for his mental suffering. Since the Chamber was not aware of, and the respondent Party had not pointed out, any provision in domestic law which would grant the applicant an effective domestic remedy from the Federation for the mental suffering damages he sought to recover in his application before the Chamber, the Chamber concluded that the applicant's claim for non-pecuniary compensation was admissible.

Thus the Chamber declared admissible the part of the application concerning the applicant's claims under Articles 3, 8, and 13 of the Convention and his claim for non-pecuniary compensation insofar as these claims related to failures by the respondent Party that continued after 14 December 1995.

### **Merits**

#### *Article 3 of the Convention*

The applicant claimed that he experienced mental suffering as a result of the uncertainty surrounding the fate of his daughter and her family. He did not learn the truth until more than seven years after the murders and until after stories and speculation concerning the murders appeared in local newspapers. Throughout the prolonged period of delay and numerous interruptions in the investigative and criminal proceedings, the applicant suffered from his apprehension, distress, and sorrow over the fate of his daughter and her family, including his two young grandsons. The Chamber found no reasonable justification for this suffering to have lasted as long as it did. Thus the Chamber concluded that the respondent Party, by failing to timely investigate and inform the applicant about the fate of his daughter's family, violated the Article 3 right of the applicant to be free from inhuman

or degrading treatment during the period of 14 December 1995 through 5 May 1999, when the applicant was recognised and allowed to participate as an injured party in the main criminal proceedings against the men who murdered his daughter's family.

#### *Article 8 of the Convention*

Noting that the applicant's claims under Article 3 and Article 8 of the Convention were in essence the same and concern the failure of the respondent Party to timely investigate and inform the applicant about the fate of his daughter's family, and in view of its conclusion with respect to Article 3, the Chamber found it unnecessary to separately examine the case under Article 8.

#### *Article 13 of the Convention*

The Chamber found that in the context of a case filed by the relative as opposed to the actual victim of the crime, the right protected by Article 13 is included within the right protected by Article 3 of the Convention. Thus, taking into account its finding of a violation of the applicant's right protected by Article 3, the Chamber found no separate violation of Article 13.

### **Remedies**

The Chamber ordered the respondent Party to pay to the applicant KM 10,000 by way of non-pecuniary compensation for his mental suffering.

*Decision adopted 10 October 2001*

*Decision delivered 9 November 2001*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party's primary challenge to the decision appeared to be that it was "unmanageable" and unfair because, since the murderers of the Golubović family were prosecuted and sentenced, the respondent Party did not in any way contribute to the suffering of the applicant. Moreover, the respondent Party complained that the application was inadmissible *ratione temporis*, as the murder of the Golubović family took place on 10 July 1992. The plenary Chamber decided to review the decision of the Second Panel in its entirety and agreed with the reasoning of the First Panel, which recommended that the request for review be granted. The First Panel considered that the request for review raised significant issues concerning the admissibility of the application and the application of the emerging body of international case-law that recognises the claims of family members under Article 3 of the Convention to be free from inhuman treatment as a result of their inability to obtain information from competent authorities about the whereabouts and fate of a loved one who disappeared under life-threatening circumstances. The First Panel also noted that this was an issue affecting many citizens of Bosnia and Herzegovina.

*Decision adopted 10 January 2002*

### **DECISION ON REVIEW**

#### **Admissibility**

Insofar as the applicant's claims related to failures by the respondent Party that continued after 14 December 1995, the Chamber found itself competent *ratione temporis* to review the application. Claims of the violation of the right to peaceful enjoyment of possessions with regard to the lost personal property of the Golubović family, allegedly stolen in July 1992 in connection with their murder, are clearly outside the Chamber's competence *ratione temporis*.

The Chamber interpreted one of the applicant's claims to be that the respondent Party violated his right to participate in the criminal proceedings against the men charged with murdering the Golubović

family and also violated his right to have such proceedings resolved in a timely and thorough manner. Domestic law provides the applicant with the right to participate in criminal proceedings as an injured party. However, this right under domestic law falls outside the scope of the protections of Article 6 of the Convention applicable to criminal proceedings and therefore the applicant's claim under Article 6 in this respect was found incompatible *ratione materiae* and declared inadmissible.

In finding the applicant's compensation claim, in respect of moral damage, admissible, the Chamber noted that Article VIII(2)(a) of the Human Rights Agreement requires the applicant to exhaust domestic remedies with respect to the alleged violations but not with respect to compensation for these violations."

The Chamber declared the application admissible with regard to Articles 3, 8, and 13 of the Convention.

## **Merits**

### *Article 3 of the Convention*

Reviewing the case-law of the European Court of Human Rights, the Chamber noted the special factors that have to be considered with respect to an applicant family member claiming an Article 3 violation for inhuman treatment due to lack of official information on the whereabouts of a loved one, as well as the special factors that have to be taken into consideration with respect to the respondent Party. The Chamber noted that it was obvious that the applicant had suffered greatly from his apprehension, distress, and sorrow over the fate of his daughter and her family; however, taking all of the relevant factors into account, in particular the successful completion of the main criminal trial against the murderers of the Golubović family, as well as the difficult post-war circumstances in Bosnia and Herzegovina, the Chamber concluded that the actions of the respondent Party toward the applicant do not rise to the level of severe ill-treatment necessary to be considered "inhuman or degrading treatment" within the meaning of Article 3.

### *Article 8 of the Convention*

Taking into account the relevant case-law of the European Court of Human Rights as well as its own decisions, the Chamber considered that information concerning the fate and whereabouts of a family member falls within the ambit of "the right to respect for private and family life". 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, then the respondent Party has failed to fulfil its positive obligation to secure the family member's right. Recognising that there was a long delay and many procedural obstacles before all the relevant information was made known, but noting that all relevant information was eventually disclosed to the applicant during the criminal trial, the Chamber concluded that the respondent Party fulfilled its positive obligation to secure respect for the applicant's rights protected by Article 8.

### *Article 13 of the Convention*

The Chamber noted that the authorities of the Federation of Bosnia and Herzegovina did conduct an investigation and criminal proceedings into the killing of the Golubović family and that the applicant was afforded the opportunity to participate in the criminal proceedings as an injured party. During the trial all relevant information was eventually disclosed. The Chamber therefore decided that there had been no violation of Article 13.

## **Remedies**

Since the Chamber found no violation of the applicant's rights protected by the Convention, the Chamber considered that no issue arose with respect to remedies.

*Decision adopted 6 May 2002*

*Decision delivered 10 May 2002*

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| <b>Case No.:</b>         | CH/99/2177                                  |
| <b>Applicant:</b>        | Islamic Community in Bosnia and Herzegovina |
| <b>Respondent Party:</b> | Republika Srpska                            |
| <b>Other Title:</b>      | “Prnjavor Graveyard Case”                   |
| <b>Date Delivered:</b>   | 11 February 2000                            |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

This case concerns the prohibition by the municipal authorities of Prnjavor, the Republika Srpska, to carry out burials at the Muslim Town Cemetery in Prnjavor. In 1994 the Municipality Prnjavor adopted an ordinance closing the Muslim Town Cemetery. Burials were subsequently carried out in the Muslim graveyards of the villages surrounding Prnjavor. In the summer of 1998, the Islamic Community in Prnjavor buried a deceased member in the Muslim Town Cemetery. The deceased's husband was ordered to exhume his wife and to re-bury her in a non-existing “new town cemetery.” These events were the subject matter of case no. CH/98/892, in which the Chamber delivered its decision on 8 October 1999, finding discrimination against the applicant. In November 1999 the municipal authorities prevented a burial at the Muslim cemetery. On 10 December 1999 the Chamber issued a provisional measure prohibiting any further interference with burials at the Muslim Town Cemetery in Prnjavor. Notwithstanding, the town the authorities again sought to interfere with a further burial in January 2000. This burial was however carried out due to the intervention of International Police Task Force, which ensured compliance with the Chamber’s provisional measure.

### **Admissibility**

The Chamber ruled that the Islamic Community had standing to present the application both on behalf of its members in Prnjavor and on its own behalf. The Chamber also concluded that it was competent to examine the application insofar as it concerned the continued enforcement of the ordinance closing the cemetery after the entry into force of the Dayton Peace Agreement, and that there were no domestic remedies available to the applicant that it could be expected to exhaust.

### **Merits**

#### *Discrimination*

The Chamber noted that the Muslim Town Cemetery had been closed, while the nearby Orthodox and Catholic cemeteries were not affected. The Chamber also noted that there was no shortage of space for burials in the Muslim cemetery and that no reasons for the closure had been provided. It therefore concluded that “the applicant’s suggestion, that the purpose of the continued enforcement of the 1994 ordinance is to discourage the return of Bosniak refugees to Prnjavor by preventing them from freely pursuing their religious traditions, has not been seriously challenged and is the only plausible explanation” of the decision to close the cemetery. The Chamber found that the continued enforcement of the ordinance closing the cemetery constituted discrimination against the Islamic Community and its members in Prnjavor in the enjoyment of their right to manifest religious beliefs in practice and observance, enshrined in Article 9 of the Convention.

### **Remedies**

The Chamber ordered the Republika Srpska to revoke within one month the ordinance closing the cemetery and to desist from any further steps to prevent burials at the Muslim Town Cemetery in Prnjavor.

**Dissenting Opinion**

Mr. Vitomir Popović and Mr. Miodrag Pajić attached a dissenting opinion in which they argued that the application should have been declared inadmissible as incompatible *ratione temporis*, and that the only effective remedy would have been for the Chamber to order the respondent Party to open a new cemetery in Prnjavor.

*Decision adopted 11 January 2000*

*Decision delivered 11 February 2000*

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| <b>Case No.:</b>           | CH/99/2233  |
| <b>Applicant:</b>          | Nada ČIVIĆ  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 12 May 2000   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant, a medical doctor, is a citizen of Bosnia and Herzegovina of Serb origin. On 27 December 1991 she purchased from the JNA an apartment in Sarajevo over which she had an occupancy right. She paid the full purchase price on 10 January 1992. However, she was never registered as the owner of the apartment. Some time after the applicant left Sarajevo in March 1995, three persons from Montenegro moved into the apartment. When the applicant and her family returned to Sarajevo in October 1997, they found the apartment occupied. Subsequently, the applicant initiated various administrative and judicial proceedings, including an application before the CRPC, but was neither able to register as the owner of the apartment nor to regain possession of it.

### Admissibility

Referring to *Onić*, and taking into account the applicant's many attempts to regain possession, the Chamber found that the available domestic remedies were not effective in practice and that, therefore, the applicant had exhausted domestic remedies. As in *Đ.M.*, the Chamber found that as the applicant raised complaints substantially different from the subject matter brought before the CRPC, the applicant's pending claim before the CRPC did not preclude the Chamber from examining her case. Thus the Chamber declared the application admissible.

### Merits

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

As for the purchase contract, it was annulled retroactively by decree of 22 December 1995, which was adopted as law on 18 January 1996. As in *Medan*, the Chamber found that the applicant's contract was a valuable asset constituting a "possession" for the purposes of Article 1 of Protocol No. 1. While the applicant initiated administrative proceedings to regain possession, the competent authorities did not issue a decision within the time-limit of 30 days prescribed by the new Abandoned Apartments Law and gave no reasonable explanation for the delay. Thus the Chamber found that the Federation was responsible for the applicant's inability to be registered as the owner of the apartment, that the applicant was made to bear an "individual and excessive burden," and that there was a violation of Article 1 of Protocol No. 1. Whereas the State was responsible for enacting the initial legislation, the Federation was responsible for the continuing inability of the applicant to be registered as owner of the apartment.

As for the occupancy right, the Chamber found that the applicant's rights under Article 1 of Protocol No. 1 were violated by the Federation authorities' continued refusal to recognise the applicant's occupancy right and allow her to return to the apartment following her request for re-instatement and contrary to the procedure set up by the new Abandoned Apartments Law.

#### *Article 8 of the Convention*

The Chamber found that Article 8 had been violated, given both the refusal to allow the applicant to repossess the apartment under the regime prior to the entry into force of the new Abandoned Apartments Law and the subsequent failure to decide on the renewed repossession claim within the time-limit contained in the new Abandoned Apartments Law.

*Article 6 of the Convention*

The Chamber found that the authorities of the Federation had not met their responsibility to ensure that the applicant's proceedings were carried out within a reasonable length of time. Instead, several hearings were scheduled and postponed without good cause both in the judicial and the administrative proceedings. Thus there was a violation of Article 6.

**Remedies**

The Chamber ordered the Federation to take immediate steps to reinstate the applicant into her apartment; to take immediate steps to secure that the applicant is registered as the owner of the apartment, and to pay the applicant KM 2,500 as compensation for the loss of use of her apartment and moral damages.

*Decision adopted 8 May 2000*

*Decision delivered 12 May 2000*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the Chamber's decision anticipated the outcome of the proceedings before the domestic institutions both concerning the applicant's registration as the owner of the apartment and regarding her reinstatement claim. The Chamber found that the orders given to the Federation were in accordance with its mandate under the Human Rights Agreement and did not depend on further decisions of any domestic institution. Thus the Chamber did not consider that the request raised a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance. As the request did not meet the two requirements of Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 5 July 2000*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/99/2239                           |
| <b>Applicant:</b>        | Jadranka CIPOT-STOJANOVIĆ            |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 June 2000                          |

## **PARTIAL DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant, a citizen of Bosnia and Herzegovina of Croat origin, is a chemical engineer from Grbavica, Novo Sarajevo. She began working in a tobacco factory in Sarajevo in 1984. During the war, when Grbavica was under the control of Serb forces, the applicant found herself unable to come to work because the factory was situated on the other side of the front-line in the part of town that was controlled by the Army of the Republic of Bosnia and Herzegovina. The applicant left Sarajevo in April 1992 and stayed abroad until May 1996. After the end of the hostilities and the integration of Grbavica into the Federation, the applicant returned to Sarajevo and wished to take up her work in the factory again. However, on 2 September 1996 she received a procedural decision stating that her employment relationship was terminated as of 4 May 1992 because she had abandoned her working post voluntarily and that she had failed to come to work for 20 consecutive working days. In October 1996 the applicant sought legal redress to regain her position but her action was rejected in the first instance in February 1999. On 20 October 1999 the Cantonal Court accepted the applicant's appeal and the lawsuit was returned to the Municipal Court for reconsideration. At the time of the Chamber's consideration, the case remained pending.

### **Admissibility**

Regarding the termination of the working relationship of the applicant and her complaints relating thereto, the Chamber noted that the domestic court proceedings remained pending and no final decision had been taken. Thus the Chamber found that effective domestic remedies had not yet been exhausted and suspended further examination of the applicant's claims concerning her re-employment. As for the applicant's complaints relating to the length of the proceedings before the domestic courts, the Chamber found that there were no domestic remedies at the applicant's disposal which she could have been required to exhaust. Thus the Chamber declared the part of the application regarding the complaint relating to the length of the domestic proceedings admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber determined that the applicant's domestic proceedings had lasted for approximately three years and seven months. The Chamber found that the issue in this case was not of a particularly complex nature, that there was no indication that the length of the proceedings could be attributed to the conduct of the applicant, and that an employee who considers that his working relationship was wrongly terminated has an important personal interest in a speedy outcome of the dispute and in securing a judicial decision on the lawfulness of this measure. Thus the Chamber found a violation of the applicant's right to a hearing within a reasonable time under Article 6.

### **Remedies**

The Chamber ordered the Federation, through its authorities, to take all necessary steps to ensure that the Municipal Court decided on the applicant's claim in an expeditious manner.

*Decision adopted 7 June 2000*

*Decision delivered 9 June 2000*

Editors note: A partial decision on the merits was issued in this case by the Chamber on 4 April 2003.

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| <b>Cases Nos.:</b>       | CH/99/2425 et al.                    |
| <b>Applicants:</b>       | Neđeljko UBOVIĆ et al.               |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Other Title:</b>      | “Glamoč Cases”                       |
| <b>Date Delivered:</b>   | 7 September 2001                     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The cases concern the attempts of the ten applicants, all citizens of Bosnia and Herzegovina of Serb ethnic origin, who were displaced in 1995, to return to their privately-owned properties consisting of agricultural land and buildings in the municipality of Glamoč in the Federation of Bosnia and Herzegovina. The properties concerned are located within a military training range used by the Army of the Federation of Bosnia and Herzegovina and designated for the construction of a combat training centre of the Federation Army in May 1998.

In October 1998 the Government of the Federation passed a procedural decision allowing the Ministry of Defence of the Federation to take possession of the real estate before valid procedural decisions on expropriation were issued. Previously, in 1997, the Federation had started construction works on a so-called “tank-range”, an area of approximately 2,5 square km in the southern part of the military training range. From 9 July 1998 to 22 August 1998 two training exercises took place during which no high explosive ammunition was fired. A third so-called “laser-exercise”, in which tanks used laser light instead of ammunition, was held from 18-21 September 2000.

The applicants Radovan Hajder, Nikola Hajder, Pane Šavija, Stoja Juzbašić and Zdravko Radičić own or co-own property in this “tank-range”. The other five applicants’ property is situated within the wider area of the military range. No constructions have been built so far, outside the “tank-range”.

The applicants alleged various violations of their human rights, including their property rights and right to respect for their homes, as well as discrimination in the enjoyment of those rights.

### **Admissibility**

Recalling that the existence of domestic remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, the Chamber found, on the information before it, that no effective remedy was available to the applicants which could have afforded redress in respect of the breaches alleged.

The respondent Party further objected to the admissibility of the applications as incompatible with the Agreement *ratione personae*, stating that the combat training centre is an SFOR project for which the Federation is not responsible. In this respect, the Chamber noted that the combat training centre project could not be understood to be for the benefit of SFOR, but was designed for the purposes of the Federation Army. The Chamber notes further that any expropriation attempts in regard to the area affected by the military training range have been carried out by the Federation in its own interest. The Chamber therefore declared the applications admissible.

### **Merits**

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

The Chamber found that it was not in dispute that the applicants were either owners or co-owners within the area designated as the combat training area. It was further established that five

applicants owned or co-owned property within the area referred to as the tank-range on which constructions for military training had been built; all ten applicants owned or co-owned plots of land and buildings within the area for which the general interest for expropriation was declared.

In relation to the five applicants who owned or co-owned property within the area referred to as the tank-range, the Chamber found that the interference constituted a “deprivation of possession”, even though the applicants retained formal ownership, as the respondent Party had taken *de facto* possession of the area of the tank range. The *de facto* possession started in 1997 before the general interest for expropriation was declared and without any compensation being paid or the value of the property being properly assessed. The Chamber found that there is a State obligation to pay compensation for expropriation, which is essential to the assessment of whether a fair balance has been struck between the various interests at stake and whether or not it is proportionate. Accordingly, the Chamber held that the deprivation was not justified, as the conditions set out in the second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention were not met. The deprivation therefore constituted a violation of those five applicants’ rights as guaranteed under that Article.

In relation to all ten applicants who owned or co-owned property within the area of general interest, the Chamber noted that the decision declaring the general interest for expropriation was passed in May 1998 and in October 1998 a decision was passed allowing the Ministry of Defence to take possession of the area before individual decisions on expropriation became effective. The Chamber held that the two decisions of 1998 constituted an interference with the applicants’ rights to the peaceful enjoyment of their possessions and further held that the respondent Party failed to act in accordance with the Law on Expropriation and its formal requirements, which was not, as previously mentioned, striking a fair balance between the demands of the community and the requirement of the protection of the applicants’ rights, thus constituting a violation of all ten applicants rights as guaranteed under the first paragraph of Article 1 of Protocol No. 1 to the Convention.

#### *Article 8 of the Convention*

In relation to the four applicants who no longer had their permanent residences in the area, even before the outbreak of hostilities, the Chamber held that these properties did not constitute a home, as protected under Article 8 of the Convention.

In relation to the four applicants who lived in the area of the tank-range at the outbreak of the hostilities who left during the armed conflict, but had intended to return after the cessation of hostilities, the Chamber found that those properties were to be considered “homes” for the purposes of Article 8 of the Convention. The Chamber further found that those applicants were prevented from returning to their homes and the uncertainty of possible military exercises aggravated the applicants’ situation further, thus constituting an interference. Examining whether the interference was justified under the second paragraph of Article 8 of the Convention, the Chamber found, as discussed under Article 1 of Protocol No. 1 to the Convention, that the respondent Party had failed to act in accordance with domestic law and that this thereby dispensed the Chamber from examining whether the acts complained of pursued a legitimate aim or were necessary in a democratic society. The Chamber therefore found that there had been a violation of Article 8 of the Convention in this respect.

In relation to the three applicants who lived in the wider area of the military training range, the Chamber held that they had intended to return after the cessation of hostilities, and these properties were also to be considered “homes” for the purposes of Article 8 of the Convention. As stated above, due to the fact that the interference was not “in accordance with law” it was not necessary to consider whether the acts complained of pursued a legitimate aim or were necessary in a democratic society. The Chamber therefore found that there had been a violation of Article 8 in this respect, as well.

#### *Article 2 of Protocol No. 4 to the Convention*

The Chamber held that in light of the findings it made in respect of that Article 1 of Protocol No. 1 to the Convention, and also in respect of Article 8 of the Convention, it was not necessary for it to examine the case under Article 2 of Protocol no. 4 to the Convention.

#### *Discrimination*

The Chamber found that there was no indication that the failure of the respondent Party to fulfil its obligations under the Law on Expropriation amounted to differential treatment toward the applicants. Additionally, in light of the drastic reduction of the military budget required by the World Bank and the International Monetary Fund, it seemed that the Federation in general has problems to compensate anyone, regardless of his or her ethnic origin.

#### *Article 6 of the Convention*

The Chamber held that in light of the findings it made in respect of that Article 1 of Protocol No. 1 to the Convention, and also in respect of Article 8 of the Convention, it was not necessary for it to examine the case under Article 6 of the Convention.

#### *Article 9 of the Convention*

The Chamber held that in light of the findings it made in respect of that Article 1 of Protocol No. 1 to the Convention it was not necessary for it to examine the case under Article 9 of the Convention.

### **Remedies**

The Chamber ordered the respondent Party to decide within six months whether to pursue expropriation proceedings in regard to each individual applicant in accordance with the relevant Law on Expropriation or, in the alternative, to abandon those plans for expropriation. In the event that the respondent Party decides to go ahead with the expropriation, it must pay compensation not only for land, forest, buildings and other facilities within the property of the applicants, but also, in accordance with the Law on Expropriation, for lost income. In the event the respondent Party decides to go ahead with its plans for expropriation, it must make available the necessary funds for fair and equitable compensation and take further steps in the expropriation proceedings, in particular, issue procedural decisions on expropriation in regard to each individual applicant. In the event the respondent Party decides to abandon the expropriation, it must still pay to the applicants compensation for the damage suffered by them until this decision takes effect. The Chamber decided to, at the time of issuing the decision, refrain from making any decision on these points, bearing in mind that the applicants and the respondent Party may reach an agreement on these issues among themselves within the six-month time limit.

The Chamber ordered the respondent Party to pay to each applicant, by way of compensation for non-pecuniary damage, the sum of 5000 KM. Additionally, the Chamber ordered the respondent Party to pay to the applicants Nikola (Riste) Hajder the amount of 316 KM, to Zdravko Radičić the amount of 300 KM and to Pane Šavija the amount of 400 KM as reimbursement for expenses necessary to attend the public hearings before the Chamber in December 2000 and in May 2001.

The Chamber reserved the right to issue an additional decision on further remedies after the expiration of the six-month limit.

*Decision adopted 3 September 2001*

*Decision delivered 7 September 2001*

### **DECISION ON FURTHER REMEDIES**

In the decision of 7 September 2001 the respondent Party was ordered to make a decision on the question of expropriation within a time-period of six months from 7 September 2001, the date of the

delivery of the decision. On 5 December 2002, the Chamber noted that approximately 15 months had passed since the decision was delivered on 7 September 2001.

On 25 February 2002, 28 May 2002 and again on 12 August 2002 the respondent Party informed the Chamber that it had abandoned the expropriation. However, it appeared that the respondent Party had failed to take the necessary steps consequential to its decision not to expropriate the applicants' property. In particular, it had neither formally withdrawn the declaration of general interest passed in May 1998 nor compensated the applicants for the damages arising for the period of time in which they could not return to their property because of the pending expropriation proceedings.

The Chamber therefore ordered the respondent Party to pass swiftly, and in any case no later than 6 February 2003, a formal decision to the effect that the Government of the Federation of Bosnia and Herzegovina withdraws its declaration of general interest of 14 May 1998 and renounces its intention to expropriate the applicants' plots.

The Chamber ordered the respondent Party to inform the applicants promptly, but no later than 20 December 2002, that it has given up the intention to expropriate the applicants' property and to also inform the applicants as soon as the decision withdrawing the declaration on general interest is published.

The Chamber ordered the respondent Party to appoint an expert who will, no later than three months from the date of his appointment, submit to the Chamber a report in which he proposes to the Chamber the amount of compensation due with regard to each individual applicant;

The Chamber ordered the respondent Party to make, by 20 December 2002, an advance payment for the costs of the expert of 5000 KM to the Chamber. In addition, the Chamber reserved its right to order the respondent Party to bear any costs arising from the appointment of the expert in excess of the advance payment;

Finally, the Chamber reserved the right to issue an additional decision on further remedies which would include an order for pecuniary compensation for each individual applicant.

*Decision adopted 5 December 2002*

*Decision delivered 6 December 2002*

|                          |   |
|--------------------------|---|
| <b>Case No.:</b>         | CH/99/2656                                  |
| <b>Applicant:</b>        | Islamic Community in Bosnia and Herzegovina |
| <b>Respondent Party:</b> | Republika Srpska                            |
| <b>Other Title:</b>      | “Islamic Community—Bijeljina”               |
| <b>Date Delivered:</b>   | 6 December 2000                             |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

In 1993, the Atik, Dašnice, Salihbegović and Krpić mosques in Bijeljina and the Atik mosque in Janja were destroyed. In June 1999 about 1,000 square meters of the Atik site in Bijeljina were fenced in, the *Gasulhana* was removed, and the construction of a bank on part of the site was begun. Construction continued despite an order for provisional measures issued by the Chamber on 10 July 1999. Moreover, moveable kiosks and tables were placed on another part of the site. On the site where the Dašnice mosque once stood a private company built a business facility on the basis of an agreement with the Bijeljina Municipality. The Salihbegović site, which had been used as a flea market after the destruction of the mosque, began to be used as a car park. The Krpić site was turned into a parking area containing eight smaller business facilities. The Atik site in Janja was used as a flea market. The applicant was thus prevented from using all of these sites for their intended religious purposes.

### Admissibility

The Chamber found that the applicant could claim status as a “victim” in relation to the alleged violations of Article 9 and Article 1 of Protocol No. 1 of the Convention, and found that the application was compatible *ratione personae*. Concluding that the domestic remedies accessible to the applicant could not satisfy the requirement of effectiveness in respect of the breaches alleged, the Chamber declared the application admissible.

### Merits

#### *Article 9 of the Convention*

The Chamber held that the above use of the sites in question prevented the applicant from using them for religious activities without justification. Thus the Chamber found a violation of Article 9.

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

In relation to the Atik site in Bijeljina, the Chamber found that the removal of the *Gasulhana* from this site as well as the construction of the bank substantially interfered with the enjoyment of the applicant’s possessions. The same applied to the construction of the business building on the Dašnice site. According to the Chamber, these actions constituted an “extensive and definitive occupation of the land in question which the applicant has a priority right to use.” As the respondent Party did not formally divest the applicant of its rights the Chamber considered them to have involved a *de facto* deprivation of the applicant’s possessions. In relation to the Krpić site, the Salihbegović site and the Atik site in Janja, the Chamber stated that the refusal of the respondent Party to prevent the citizens of Bijeljina from illegally using these sites prevented the applicant from using them for the reconstruction of its mosques and was “an interference with the general principle of peaceful enjoyment of possessions.” The Chamber found that the above interferences could not be considered to be in accordance with the public interest as they were based on discriminatory grounds and, therefore, found a violation of the applicant’s right to the peaceful enjoyment of possessions.

under Article 1 of Protocol No. 1.

### *Discrimination*

As there was no reasonable and objective justification for the differential treatment of the applicant, the Chamber found that the Bijeljina authorities had both actively engaged in and passively tolerated discrimination against Muslim believers due to their religion and ethnic origin. Thus the Chamber found that the applicant suffered from discrimination in the enjoyment of its rights under Article 9 of the Convention and Article 1 of Protocol No. 1 to the Convention.

### **Remedies**

The Chamber ordered the Republika Srpska to remove from the Atik site in Bijeljina the fence erected in connection with the construction of the bank and all moveable kiosks and tables and not to permit the use of the site for any purpose affecting or interfering with the rights of the Islamic Community, and to grant the necessary permit for reconstruction of the Atik mosque at the location in Bijeljina at which it previously existed; to remove from the Dašnice site the part of the business facility which covers mosque land, and to grant the necessary permit for reconstruction of the Dašnice mosque at the location in Bijeljina at which it previously existed; to put an end to the use of the Salihbegović site as a car park and not to permit the use of the site for any purpose affecting or interfering with the rights of the Islamic Community, and to grant the necessary permit for reconstruction of the Salihbegović mosque at the location in Bijeljina at which it previously existed; to remove from the Krpić site all existing business facilities and not to permit the use of the site as a parking area or its use for any other purpose affecting or interfering with the rights of the Islamic Community, and to grant the necessary permit for reconstruction of the Krpić mosque at the location in Bijeljina at which it previously existed; to remove the flea market from the Atik site in Janja and not to permit the use of the site for any purpose affecting or interfering with the rights of the Islamic Community, and to grant the necessary permit for reconstruction of the Atik mosque at the location in Janja at which it previously existed.

The Chamber also ordered the Republika Srpska to pay the applicant KM 10,000 as monetary compensation for the moral damage suffered after 14 December 1995 in relation to all sites in question; and to pay the applicant KM 15,000 by way of compensation for the part of the Atik site in Bijeljina which is covered by the new bank building and which can therefore not be used for the reconstruction of the mosque, and for the destruction of the *Gasulhana*.

### **Dissenting Opinion**

Mr. Mehmed Deković attached a partly dissenting opinion in which he argued that the Chamber's compensation award was inadequate, and that the Chamber's order obliging the respondent Party to grant the necessary permit for reconstruction of the Atik mosque was unnecessary.

Mr. Vitomir Popović attached a dissenting opinion in which he argued that the application should have been declared inadmissible and referred to his dissenting opinions in case nos. CH/96/29 and CH/98/1062.

*Decision adopted 5 December 2000*

*Decision delivered 6 December 2000*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review. The Chamber noted that the respondent Party submitted its request for review 37 days after the public delivery of the decision on admissibility and merits, while under the terms of Rule 63 paragraph 2 of its Rules of Procedure, according to the English text, a request for review of a decision delivered at a public hearing in accordance with Rule 60 paragraph 2 must be lodged within one month from the date of such delivery. Under the terms of

Rule 63 paragraph 2 as it reads in the Bosnian, Croatian and Serbian languages, such a request for review must be lodged within one month from the date on which the decision is delivered by the Registrar to the parties concerned. However, the word “delivered” is used in Rule 60 paragraph 4 of its Rules of Procedure as well, where in the English version the word “transmitted” is used. Thus Rule 63 paragraph 2 may be read in the national language versions to refer to Rule 60 paragraph 4 as well, with the consequence that the delivery takes place when the decision is transmitted. Thus the Chamber deemed the request to have been lodged within the time-limit prescribed by Rule 63 paragraph 2.

Nevertheless, the Chamber found that the arguments upon which the respondent Party’s request for review was based had been examined by the Second Panel which considered the admissibility and merits of the case and that they had been rejected on adequate grounds. Thus the Chamber found that the request for review did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted 8 March 2001*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/99/2696                           |
| <b>Applicant:</b>        | Arif BRKIĆ                           |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 October 2001                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. The case concerns his failed attempts to be permitted to resume work as a dentist and oral surgeon in the Medical Centre of Livno where he worked until 21 July 1993. He was expelled from work during the Bosniak-Croat conflict in the region due to the application of martial law. From that day until the adoption of the present decision he had not been allowed to resume work and had never received any written decision on his removal from work.

### **Admissibility**

First, while there is no evidence that the Federation explicitly instructed the Medical Centre to take any of the decisions about which the applicant complained, the Medical Centre is a public institution, and thus the impugned acts and omissions are attributable to the Federation. Thus the Chamber rejected the Federation's argument that it could not be held responsible for the alleged acts in question. Second, as the applicant's grievance related to a situation that continued after 14 December 1995, the Chamber found that the application fell within its competence *ratione temporis*. Third, noting the lengths to which the applicant had gone to have his case resolved before the relevant domestic court, the Chamber found that the applicant could not be required to initiate any further proceedings under the Law on Labour and that there was no additional remedy available to the applicant that he was required to exhaust. Fourth, noting that Article 8 does not concern the right to work or the protection against unemployment and other related rights and material claims, the Chamber found that the application was inadmissible as manifestly ill-founded insofar as it concerned alleged violations of Article 8 of the Convention.

### **Merits**

#### *Discrimination*

The Chamber considered alleged discrimination in relation to Article 6 paragraph 1 and Article 7(a)(i) and (ii) of the ICESCR and Articles 1 paragraph 1 and 5(e)(i) of CERD, which guarantee the right to work as well as to just and favourable remuneration and protection against unemployment.

The Chamber found that the applicant was subjected to differential treatment in comparison with colleagues of Croat origin, and that there was no evidence that the applicant's treatment was objectively justified in pursuance of any legal provisions during and after the war. Thus the Federation's authorities either actively or at least passively discriminated against the applicant due to his Bosniak origin, or tolerated such discrimination. The Chamber found that the Federation had discriminated against the applicant in the enjoyment of his right to work, to just and favourable conditions of work, and to protection against unemployment, guaranteed by the ICESCR and CERD.

#### *Article 6 of the Convention*

The Chamber found that the Federation had failed to bring the applicant's proceedings to a conclusion within a reasonable time, and had thus violated the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1.

*Article 13 of the Convention*

Given that the guarantees afforded by Article 13 are less strict than those provided by Article 6 paragraph 1, having regard to its finding of a violation under the latter provision, the Chamber considered it unnecessary to examine the complaint also under Article 13.

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

In light of its finding of a violation of the ICESCR and CERD, the Chamber found that there was no need to examine the applicant's complaint of a violation of his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

**Remedies**

The Chamber ordered the Federation to take all necessary steps to ensure that the applicant was immediately offered the possibility to resume his work on terms appropriate to his former position and equally enjoyed by others with similar qualification without suffering any further discrimination. The Chamber also ordered the Federation to pay the applicant not later than 12 November 2001 KM 45,000 as compensation for pecuniary and non-pecuniary damages, and KM 50 for each day from 12 November 2001 until the applicant was offered to resume his work on terms appropriate to his former position and equally enjoyed by others with similar qualification.

*Decision adopted 8 October 2001*

*Decision delivered 12 October 2001*

|                            |   |
|----------------------------|---|
| <b>Case No.:</b>           | CH/99/3050  |
| <b>Applicant:</b>          | Muhamed MUJAGIĆ   |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 9 March 2001  |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina and the owner of a house in Sarajevo where he ran a business. On 28 June 1993 the driver of a vehicle allegedly belonging to the Army of Bosnia and Herzegovina lost control of the steering wheel, went off the road and crashed into the applicant's house and damaged the front part of the business premises on the ground floor. The applicant sued the Army of Bosnia and Herzegovina for damages. Three successful judgments in the applicant's favour issued by the First Instance Court I or the Municipal Court I in Sarajevo, respectively, were annulled on appeal by the High Court or Cantonal Court in Sarajevo, respectively, and were referred back to the lower court for rehearing. The fourth successful judgment in the applicant's favour issued by the Municipal Court I in Sarajevo remained pending on appeal before the Cantonal Court in Sarajevo. At the time of the adoption of the Chamber's decision, these proceedings had been going on for more than five years.

### **Admissibility**

First, the Chamber noted that, while the civil proceedings started prior to 14 December 1995, they had continued for over five years after this date. Thus the Chamber found that the application came within the competence of the Chamber *ratione temporis*. Second, as the State could not be held responsible for any possible violation insofar as the matters complained of fall within the responsibility of the Federation, the Chamber declared the application inadmissible *ratione personae* insofar as it was directed against the State. Third, the Chamber concluded that the applicant had exhausted the available domestic remedies. Fourth, the Chamber found that the applicant had not substantiated his claim concerning lack of impartiality and independence of the court, and declared this claim inadmissible as manifestly ill-founded. In sum, the Chamber declared the claim concerning the length of proceedings admissible against the Federation insofar as it concerned events that took place after 14 December 1995.

### **Merits**

#### *Article 6 of the Convention*

The Chamber found that there was nothing to indicate that the length of the proceedings was caused by the applicant, that the case was not a complex one, and that the delays were caused by the case having gone back and forth between the domestic courts. Thus the Chamber found a violation of Article 6 in relation to the requirement of a fair trial within a reasonable time.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to ensure that the litigation between the applicant and the Federal Ministry of Defense was brought to a conclusion without further delay, and to pay the applicant KM 1,000 by way of compensation for non-pecuniary damage.

*Decision adopted 6 February 2001*

*Decision delivered 9 March 2001*

## **DECISION ON REQUEST FOR REVIEW**

The Federation submitted a request for review arguing that the length of the proceedings before the domestic courts had been reasonable; arguing that the order given by the Chamber, to take all necessary steps to ensure that the litigation between the applicant and the Federal Ministry of Defense was brought to a conclusion without further delay, had been fulfilled and had become irrelevant; and disputing the award of monetary relief made in favour of the applicant. The Chamber found that the request involved neither a serious issue affecting the interpretation of the Human Rights Agreement nor an issue of general importance, nor did the whole circumstances justify reviewing the Decision. Thus the request did not meet either of the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure, and the Chamber decided to reject the request for review.

*Decision adopted 10 May 2001*

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/99/3071 et al.   |
| <b>Applicants:</b>         | JOKIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 8 February 2002   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant and ten others applied to regain possession of their apartments in Sarajevo, Municipalities Novo Sarajevo, Novi Grad, Centar, Ilidža or Vogosća. The applicants lodged applications with the CRPC which issued decisions confirming that they were the pre-war occupancy right holders of the properties on 1 April 1992. However, the competent authorities failed to execute those decisions.

### Admissibility

The Chamber found the complaint against Bosnia and Herzegovina inadmissible *ratione personae*, since returning property to pre-war occupants or owners was not within the state's competence.

As against the Federation of Bosnia and Herzegovina, the Chamber considered the applicants' attempts to secure domestic remedies and found that further actions in the domestic fora were unlikely to succeed. Even if such actions were successful they would not remedy the complaint, as the authorities failed to enforce the CRPC decisions within the time limits. The Chamber found discrimination claims and the right of life and freedom of movement claims manifestly ill-founded and inadmissible due to lack of evidence supporting such allegations, but declared the other aspects of the complaints admissible against the Federation of Bosnia and Herzegovina.

### Merits

#### *Article 8 of the Convention*

The Chamber found that the applicants' apartments were "homes" within the meaning of Article 8. The Chamber also held that Article 8 created a positive obligation not just to pass legislation ensuring respect for home, but to implement such laws. The Chamber then held that failure to enforce the decision of the CRPC to reinstate the applicants in their apartments was an ongoing interference with the right to one's home, that it was not "in accordance with the law" and that it therefore violated Article 8.

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

Observing that the applicants' occupancy rights were valuable assets held indefinitely, the Chamber relied on its prior decisions to affirm that the applicants' apartments were "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. The Chamber held that failure to enforce the CRPC decisions was an ongoing interference with the applicants' rights to enjoyment of their possessions. The Chamber found no justification for the interference, since it was neither in the public interest nor subject to the conditions of national law. Consequently, the Chamber found a violation of Article 1 of Protocol No. 1.

#### *Articles 6 and 13 of the Convention*

The Chamber deemed it not necessary to consider the applications also under Articles 6 and 13 in view of its finding of violations of other Articles.

## **Remedies**

The Chamber ordered the Federation to reinstate the applicants into possession of their apartments immediately and in any event no later than one month after the date on which the decision became final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. Further, the Chamber ordered the respondent Party to pay to each of the applicants the sum of KM 1,200 in recognition of their suffering as a result of their inability to regain possession of their apartments in a timely manner. The Chamber also ordered the respondent Party to compensate the applicants for the loss of use of their homes and any extra costs for each month they have been forced to live in alternate accommodation. The Chamber set the compensation at KM 200 per month and payable from the expiration date for the competent administrative organ to issue a conclusion on the permission of enforcement of the CRPC decision. This sum should continue to be paid at the same rate until the end of the month in which the applicants regain possession of their apartments.

*Decision adopted 4 February 2002*

*Decision delivered 8 February 2002*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review challenging the Chamber's decision on the following grounds (a) that two orders in the decision are incompatible: the order to pay the applicants KM 200 for each further month the applicants remain excluded from their apartments or houses and the order to enable applicants' reinstatement at the latest one month after the date on which the decision becomes final and binding; (b) that the Chamber did not decide to strike out three cases in which the applicants had been reinstated before the decision was delivered; and (c) that the orders for compensation were excessive. The Chamber stated that the respondent Party had failed to give any grounds as to why the issues referred to in the request for review would raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance", as required by Rule 64 paragraph 2 of its Rules of Procedure, and therefore decided to reject the request for review.

*Decision adopted 14 February 2002*

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|--------------------------|---------------------|
| <b>Case No.:</b>         | CH/99/3196          |
| <b>Applicants:</b>       | Avdo and Esma PALIĆ |
| <b>Respondent Party:</b> | Republika Srpska    |
| <b>Date Delivered:</b>   | 11 January 2001     |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The application was brought before the Chamber by Ms. Esma Palić in her own right and on behalf of her husband, Colonel Avdo Palić. The applicant's husband was a military commander of the Army of the Republic of Bosnia and Herzegovina in the Žepa enclave. In July 1995, when intensive fighting with Bosnian Serb forces was going on in that area, Colonel Palić was negotiating with the Bosnian Serb Army, on UN premises and under UN safety guarantees, about the evacuation of civilians. On 27 July 1995 Colonel Palić was forcibly taken away by Bosnian Serb forces in the presence of UN soldiers and monitors and taken in the direction of Bosnian Serb General Ratko Mladić's command position. At the date of the adoption of the Chamber's decision, Colonel Palić was still registered as a missing person.

### **Admissibility**

The Chamber found that there was strong circumstantial evidence that Colonel Palić was held in detention after 14 December 1995. Thus, insofar as an ongoing violation of his rights was claimed, the Chamber found that the application came within the competence of the Chamber *ratione temporis*. The Chamber noted that the applicant Ms. Palić filed, *inter alia*, a claim with the competent commission in the Republika Srpska, but never received any information on the whereabouts of her husband. No investigation was ever carried out in respect of the arrest and detention of Colonel Palić, and the Chamber found that a complaint to the Republika Srpska police would not have been effective. The Chamber therefore found that Ms. Palić did not have to report to the police authorities of the respondent Party what had happened to her husband, and that she had exhausted all effective domestic remedies. Thus the Chamber declared the application admissible.

### **Merits**

#### *Article 5 of the Convention*

The Chamber found that the evidence before it confirmed beyond doubt that Colonel Palić was forcibly taken away by Bosnian Serb forces, prior to 14 December 1995, and subsequently detained, and that it must be assumed that Colonel Palić was either still kept in captivity or that he had been killed. Noting that the authorities of the respondent Party had failed to offer any credible and substantiated explanation for the whereabouts and fate of Colonel Palić and that no investigation was conducted when Ms. Palić presented credible indications that her husband was in detention and that she was concerned for his life, the Chamber found that the respondent Party had failed to discharge its responsibility to account for him and that it must be accepted that he had been held in unacknowledged detention in the complete absence of the safeguards contained in Article 5. Thus the respondent Party violated Colonel Palić's right to liberty and security of person under Article 5.

#### *Article 2 of the Convention*

The Chamber noted the total absence of action on the part of the respondent Party to investigate the fate of Colonel Palić and to make all relevant information about him, particularly as to whether he was still alive, available to Ms. Palić and to the Chamber. The Chamber also noted that, according to the European Court of Human Rights, the period of time which has elapsed since a person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account in

determining the likelihood that he or she has died. Taking into account that about five years had passed without information as to Colonel Palić's whereabouts or fate the Chamber concluded that the respondent Party had violated Colonel Palić's right to life as guaranteed under Article 2.

#### *Article 3 of the Convention*

Regarding Colonel Palić, the Chamber found that the facts surrounding his deprivation of liberty disclosed that he was a victim of enforced disappearance within the meaning of the UN Declaration on the Protection of All Persons from Enforced Disappearance, of which Article 1 holds that any act of enforced disappearance constitutes a violation of the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. The Chamber found that this *incommunicado* detention and the suffering and fear of Colonel Palić that may safely be presumed to have been caused by it revealed inhuman and degrading treatment in violation of Article 3 in relation to Colonel Palić.

Regarding Ms. Palić, the Chamber noted that she had suffered uncertainty, doubt and apprehension for more than five years. Although she had filed an application with the competent commission of the respondent Party requesting the investigation of her husband's fate, she had been left with the anguish of knowing that her husband was detained on 27 July 1995 and that there was a complete absence of official information as to his fate. No steps had been taken by the respondent Party to remedy these matters. Thus the Chamber found that the respondent Party was in breach of Article 3 in respect of Ms. Palić.

#### *Article 8 of the Convention*

The Chamber noted that Ms. Palić had shown that her husband was arrested by the respondent Party on 27 July 1995 and that he was apparently never released, and that she had, without any success, filed an application with the competent commission of the respondent Party and taken various other steps to get information from the respondent Party about the whereabouts of her husband. The Chamber therefore found that Ms. Palić had sufficiently substantiated that the respondent Party was arbitrarily withholding from her information, which must be in its possession, concerning the fate of her husband, including information concerning her husband's body, if he was no longer alive. Thus the respondent Party violated her right to respect for her family life under Article 8.

### **Remedies**

The Chamber ordered the Republika Srpska to carry out immediately a full investigation capable of exploring all the facts regarding Colonel Palić's fate from the day when he was forcibly taken away with a view to bringing the perpetrators to justice; to release Colonel Palić, if still alive, or otherwise, to make available his mortal remains to Ms. Palić; to make all information and findings relating to the fate and whereabouts of Colonel Palić known to Ms. Palić; to pay to Ms. Palić KM 15,000 by way of compensation for her mental suffering; and to pay to Ms. Palić in respect of her husband, by way of compensation for non-pecuniary damage, KM 50,000, to be held by her for her husband or his heirs.

### **Dissenting Opinion**

Mr. Vitomir Popović attached a dissenting opinion in which he argued that the Chamber should have declared the application inadmissible as incompatible *ratione temporis* and for failure to exhaust domestic remedies.

*Decision adopted 9 December 2000*

*Decision delivered 11 January 2001*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review. As for the respondent Party's argument that the Chamber went beyond the claims set out in the application by considering the application as having been submitted by Ms. Palić in her own right as well as on behalf of her husband, the Chamber found that nothing suggested that Ms. Palić did not wish to apply in her own name as well as in that of her husband. As for the argument that the application ought to have been declared inadmissible on the ground of non-compliance with the six-month rule, the Chamber considered that since the application complained of a continuing situation, this objection should be rejected. As for the respondent Party's disagreement with the award of monetary relief made in favour of the applicant, the Chamber found that it involved neither a serious issue affecting the interpretation of the Human Rights Agreement nor an issue of general importance. Thus the Chamber considered that the request did not meet the two conditions required for the Chamber to accept such a request pursuant to Rule 64 paragraph 2 of its Rules of Procedure, and decided to reject the request for review.

*Decision adopted 8 March 2001*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/00/3546                           |
| <b>Applicant:</b>        | Dževdet TUZLIĆ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 8 February 2001                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant is the owner of an apartment in Sarajevo. During the war the applicant left the apartment due to the hostilities. On 22 September 1993, the City Secretariat for Housing Affairs declared the apartment abandoned under the old Abandoned Apartments Law. On 13 October 1993 the same authority allocated the apartment to Z.K. for temporary use. After the hostilities ended, in July of 1996, the applicant appealed the decisions declaring his apartment abandoned and allocating it to Z.K. His occupancy right was eventually confirmed by a decision under the new Abandoned Apartments Law on 24 June 1998. However, this decision was not enforced. In November 1998 the applicant was able to register his ownership over the apartment. The applicant's rights as the owner of real property were confirmed by a decision under the new Law on the Cessation of the Application of the Law on Abandoned Real Property owned by Citizens on 6 September 1999. However, this decision was not enforced.

### Admissibility

Noting that the applicant had been party to innumerable hearings, procedures and complaints before administrative authorities and the courts in an effort to regain possession of the apartment that he undisputedly owns, the Chamber found that while these domestic remedies were possibly effective in theory they had proved to be wholly ineffective in practice. Thus the Chamber considered that the applicant could not be required to exhaust any further domestic remedies, and declared the application admissible.

### Merits

#### *Article 8 of the Convention*

As in *Kevešević*, the Chamber found that the provisions of the old Abandoned Apartments Law, in particular those relating to repossession, were so arduous for refugees and displaced persons wishing to return to their homes as to make them virtually impossible to comply with, and thus failed to meet the standards of "law" as this expression is understood under Article 8. Thus the declaration that the applicant's apartment was abandoned was not made "in accordance with the law" as required by Article 8. Regarding the new Laws, the Chamber found that the competent authorities had failed to resolve the applicant's repossession claims within the time limits prescribed by them. Thus there was an ongoing violation of the applicant's right to respect for his home within the meaning of Article 8 insofar as the procedure for examining his repossession claim had not been "in accordance with the law" either. In sum, the Chamber concluded that Article 8 had been violated, given both the decision declaring the applicant's apartment abandoned and the failure to resolve the applicant's repossession claim within the time limits prescribed by law.

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

As in *Kevešević*, and for the same reasons as given in the context of its examination of the case under Article 8, the Chamber concluded that Article 1 of Protocol No. 1 had been violated, given both the decision to declare the apartment abandoned and the subsequent failure of the authorities to process the applicant's repossession claims in accordance with the new Laws.

*Article 6 of the Convention*

Finding that the issue in this case was not particularly complicated, that the delay in the applicant's court proceedings must be imputed to the respondent Party, and that a person who has lost his home has an important personal interest in the speedy outcome of the dispute and in securing a final and binding judicial decision that will, in fact, provide him with the relief that he seeks, the Chamber found a violation of the applicant's right to a fair hearing within a reasonable time under Article 6.

**Remedies**

The Chamber ordered the Federation take all necessary steps to enable the applicant to return swiftly into his apartment; to pay to the applicant KM 8,000 in compensation for pecuniary damage resulting from the violation of his rights; to pay to the applicant an additional KM 200 per month for each additional month, counting from February 2001, during which the applicant was prevented from returning to his apartment; and to pay to the applicant KM 2,000 in compensation for non-pecuniary damage resulting from the violation of his rights.

*Decision adopted 13 January 2001*

*Decision delivered 8 February 2001*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it pointed out that the applicant's claim for pecuniary and non-pecuniary damages was never forwarded to the respondent Party and that, consequently, the respondent Party was never able to respond to it. The Chamber was of the opinion that this raised a serious issue affecting the application of the Human Rights Agreement, and that the whole circumstances justified reviewing the decision, as required by Rule 64 paragraph 2 of its Rules of Procedure.

In addition, the respondent Party argued that the original decision had become devoid of purpose, because the applicant had been reinstated within 48 hours of its delivery. The Chamber rejected that this was a ground for review. The Chamber found that this did not raise a serious question affecting the interpretation or application of the Human Rights Agreement or a serious issue of general importance, and that the whole circumstances did not justify reviewing the decision on this point. Thus the Chamber decided to accept the request for review, insofar as it related to the pecuniary and non-pecuniary damages, but to reject the remainder of the request.

*Decision adopted 7 September 2001*

**DECISION ON REVIEW**

**Review of conclusion regarding pecuniary damage**

The respondent Party argued that the amount awarded was too high and not in accordance with the jurisprudence of the Chamber, and that the applicant did not substantiate the expense he claimed to have incurred by way of rent paid for alternative accommodations. The Chamber was of the opinion that the award of pecuniary compensation was in accordance with the Chamber's case-law, was based on adequate grounds and was appropriate as compensation for the applicant. Accordingly, the plenary Chamber affirmed the conclusion regarding pecuniary damage.

**Review of conclusion regarding non-pecuniary damage**

The Chamber was of the opinion that the Second Panel's award of compensation for non-pecuniary damage was in accordance with the Chamber's case-law and was based on adequate grounds. Accordingly, the Chamber affirmed the conclusion regarding non-pecuniary damage.

*Decision adopted 7 December 2001*

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|--------------------------|------------------|
| <b>Case Nos.:</b>        | CH/00/3642       |
| <b>Applicants:</b>       | Zoran ALEKSIĆ    |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 8 November 2002  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina of Serb origin. On 20 January 1998 the applicant was arrested and detained at Tunjice prison, Republika Srpska, on the basis of an outstanding warrant of arrest issued by the Court of First Instance in Banja Luka for numerous offences of aggravated theft. On 21 and 22 January and 2 February 1998 the applicant was taken to the Police Security Centre in Banja Luka and interrogated by several members of the Republika Srpska Police Force. The applicant alleged that during these interrogations several officers, with the use of a rubber hose, baseball bat and their closed fists, physically beat him. On 2 February 1998 the applicant complained to the United Nations International Police Task Force, which subsequently examined his injuries and on the following day questioned the officers who had interrogated the applicant. On 26 March 1998 the Banja Luka Public Security Centre Disciplinary Commission held a public hearing into the incident. The Disciplinary Commission established that the applicant was not subject to any violence, ill-treatment or intimidation, but found two of the responsible officers guilty of violations of the Rules of Procedure on Disciplinary Responsibility of Employees of the Republika Srpska Ministry of Internal Affairs. It cleared all officers of charges of assault and battery.

### Admissibility

As for the applicant's complaint that he was denied the right to a fair trial by an independent and impartial tribunal in relation to the proceedings before the Disciplinary Commission proceedings, the Chamber declared this part of the application inadmissible *ratione materiae*. As for the applicant's claim concerning alleged unlawful detention, the Chamber declared this part of the application inadmissible as manifestly ill-founded.

Concerning the issue of exhausting domestic remedies, the Chamber recalled that an action for compensation for the purposes of Article 3 of the Convention does not refer to initiating an action against individual police officers, but an action against the government that is capable of providing redress in respect of the applicant's complaints. Therefore, initiating civil proceedings against the police officers for compensation, as well as commencing criminal proceedings, are not sufficient remedies that the applicant was required to exhaust.

Finding that no effective remedy was available to the applicant which could have provided redress in respect of his complaint under Article 3 of the Convention, the Chamber found that no other ground for declaring the case inadmissible had been established. Accordingly, the Chamber declared the application admissible under Article 3 of the Convention.

### Merits

Recalling *Pržulj v. Republika Srpska*, the Chamber held that where an individual is taken into police custody in good health but is found to be injured at the time of release, the respondent Party bears the burden to provide a plausible explanation as to the cause of the injuries, failing which a clear issue arises under Article 3 of the Convention. On examination of the evidence before it, the Chamber held that the applicant had suffered injury whilst under the care of the responsible police officers and held that the treatment the applicant had endured on 21 and 22 January 1998 and 2 February 1998 amounted to treatment sufficiently serious and cruel enough to amount to torture within the meaning of Article 1 of the United Nations Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment, thus constituting a violation of Article 3 of the Convention.

### **Remedies**

The Chamber ordered the Republika Srpska to carry out a full criminal investigation into the conduct of the police officers involved in the torture of the applicant, and the police officers' superiors for condoning, acquiescing or participating in such activities, with a view to bringing the perpetrators to justice in accordance with the law of the Republika Srpska. Further, the Chamber ordered the respondent Party to pay the applicant the sum of KM 10,000 as compensation for the physical and mental pain and suffering he had suffered.

### **Partly Dissenting Opinion**

In his partly dissenting opinion, Mr. Vitomir Popović argued that finding a violation of Article 3 of the Convention represented sufficient satisfaction to the applicant.

Mr. Popović noted that in paragraph 2 of the decision it was mentioned that "on 20 January 1998 the applicant was arrested by members of the Republika Srpska Police Force and detained on the basis of a warrant of arrest issued by the Court of First Instance in Banja Luka for numerous offences of aggravated theft ...", which means that the applicant is indirectly responsible for that event.

Mr. Popović did not raise any other objection to the decision.

*Decision adopted 8 October 2002*

*Decision delivered 8 November 2002*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/00/3708                           |
| <b>Applicant:</b>        | Zorica LAZAREVIĆ                     |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 March 2001                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicant is a citizen of Bosnia and Herzegovina of Serb descent and the pre-war occupancy right holder of an apartment in Novo Sarajevo. The applicant left her apartment in 1992 due to the war hostilities. The case concerns her attempts to regain possession of her apartment. The applicant lodged an application with the CRPC, which issued a decision recognising her occupancy right. The applicant filed a request for the execution of the CRPC decision to the competent municipal organ, but received no response. At the time of the adoption of the Chamber's decision, the CRPC decision had not been executed.

### **Admissibility**

Noting that the applicant had made repeated attempts to have the CRPC decision enforced and she had been unsuccessful, the Chamber was satisfied that the applicant could not be required to pursue any further remedy provided by domestic law, and declared the case admissible.

### **Merits**

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

The Chamber noted that under the Law on Implementation of the Decisions of the CRPC 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. Accordingly, the failure of the competent administrative organ to decide upon the applicant's requests was contrary to the law. Thus there was a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

#### *Article 8 of the Convention*

For the same reasons as given in the context of its examination of the case under Article 1 of Protocol No. 1, the Chamber found the failure of the competent administrative organ to decide upon the applicant's request was not "in accordance with the law" and thus that there was a violation of the right of the applicant to respect for her home as guaranteed by Article 8.

### **Remedies**

The Chamber ordered the Federation 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; to pay to the applicant KM 2,000 in respect of non-pecuniary damage; to pay to the applicant KM 4,400 as compensation for the loss of use of the apartment and for any extra costs during the time the applicant was forced to live in alternative accommodation; to pay to the applicant KM 200 for each further month that she continued to be forced to live in alternative accommodation as from 1 April 2001 until the end of the month in which she was reinstated.

### **Dissenting Opinion**

Mr. Viktor Masenko-Mavi attached a dissenting opinion in which he argued that the Chamber should not have found a violation of an Article of the Convention (in this case, Article 8) under which the case was not transmitted to the respondent Party. He argued that to do so disregarded the adversarial principle at the heart of the Chamber's proceedings, according to which the parties should have the opportunity to defend themselves. Here, the Federation had no such opportunity, because it was given no indication that the case would be considered also under Article 8.

*Decision adopted 6 March 2001*

*Decision delivered 9 March 2001*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for a review. As for the respondent Party's argument that the Chamber ought not to have found a violation of Article 8 as the application was never transmitted to it under that Article, the Chamber found that, because it had also found a violation of Article 1 of Protocol No. 1, a decision on review reversing its findings with respect to Article 8 would not have been capable of leading to a different outcome of the case as a whole. As for the respondent Party's disagreement with the award of monetary compensation made in favour of the applicant, the Chamber found that the award was based on adequate grounds. Thus the Chamber found that the request did not meet the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure and decided to reject the request for review.

*Decision adopted 10 May 2001*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/00/3733 et al.   |
| <b>Applicants:</b>         | Veljko MARJANOVIĆ et al.  |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 9 November 2001   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are citizens of Bosnia and Herzegovina and pre-war occupancy right holders of apartments in Novo Sarajevo. The cases concern the applicants' attempts to regain possession of their apartments. All applicants lodged applications to the CRPC, which issued decisions recognising their occupancy rights. However, the competent authorities failed to execute those decisions.

### Admissibility

Not having received any evidence indicating that Bosnia and Herzegovina was responsible for any of the matters complained of, the Chamber declared the case inadmissible *ratione personae* as against Bosnia and Herzegovina. As for the claims against the Federation, the Chamber noted that as the applicants had made repeated unsuccessful attempts to remedy their situation, and that the use of other remedies would not remedy the applicants' complaints, it could not require the applicants to pursue any further remedy provided by domestic law. Noting that the applicants had not submitted any evidence to support allegations of discrimination, the Chamber dismissed this part of the application as manifestly ill-founded. In sum, the Chamber declared the applications admissible insofar as directed against the Federation, except for the complaint of discrimination, and inadmissible insofar as directed against Bosnia and Herzegovina.

### Merits

#### Article 8 of the Convention

Noting that the applicants' apartments are their "homes" for the purposes of Article 8, the Chamber recalled that the CRPC had issued decisions confirming the applicants' right to repossess their apartments. The applicants were unable to regain possession of their apartments due to the failure of the authorities of the Federation to deal effectively with their requests for the enforcement of the CRPC decisions. The result of the inaction of the respondent Party was that the applicants could not return to their homes, and thus there was an ongoing interference with the applicants' right to respect for their homes. As the failure of the competent administrative organ to decide upon the applicants' requests was not "in accordance with the law," the Chamber found a violation of the applicants' rights under Article 8.

#### Article 1 of Protocol No. 1

Noting that the applicants' apartments constituted "possessions" for the purposes of Article 1 of Protocol No. 1, the Chamber considered that the failure of the authorities of the respondent Party to allow the applicants to regain possession of the apartments was an ongoing "interference" with the right to peaceful enjoyment of that possession. For the same reasons as given in its examination under Article 8, the Chamber found that this interference was contrary to the law, and thus that there was a violation of the right of the applicants under Article 1 of Protocol No. 1.

#### Articles 6 and 13 of the Convention

Considering that it had found violations of the applicants' rights under Article 8 and Article 1 of Protocol No. 1, the Chamber did not consider it necessary to examine the cases under Articles 6 and 13.

**Remedies**

The Chamber ordered the Federation to enable the applicants to regain possession of their apartments without further delay. The Chamber also ordered the Federation to pay to each of the applicants various sums as compensation for non-pecuniary damage and the loss of use of their homes, and KM 200 for each further month that they remained excluded from their apartments as from November 2001 until the end of the month in which they would be reinstated.

*Decision adopted 9 October 2001*

*Decision delivered 9 November 2001*

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|--------------------------|--------------------|
| <b>Case Nos.:</b>        | CH/00/3880         |
| <b>Applicants:</b>       | Momčilo MARJANOVIĆ |
| <b>Respondent Party:</b> | Republika Srpska   |
| <b>Date Delivered:</b>   | 8 November 2002    |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He was arrested in July 1994 and charged with murder. On 18 July 1996 the applicant was convicted of murder and sentenced to 7 years imprisonment. Both the applicant and the Public Prosecutor filed appeals against the First Instance judgment and on 20 December 1996 the Court of Second Instance in Bijeljina accepted the applicant's appeal and ordered a re-trial. On 14 May 1998 the applicant's retrial commenced before the Court of Second Instance in Bijeljina and on 31 August 1999 he was convicted of murder and again sentenced to 7 years imprisonment. On 22 May 2000 the Supreme Court of the Republika Srpska accepted an appeal submitted by the Public Prosecutor and modified the applicant's sentence to 8 years imprisonment. On 18 March 2002 the applicant was released from custody. His sentence was to expire on 18 July 2002.

The applicant complained of various violations of his rights in relation to the lawfulness and length of his detention, the fairness and length of proceedings and that he was subjected to inhuman or degrading treatment in prison. He further complained that he was deprived of the right of access to family visits and that the prison authorities interfered with his right of access to a telephone and right to correspondence.

### Admissibility

First, the Chamber considered whether it was competent, *ratione temporis*, to consider the case, bearing in mind that the applicant was deprived of his liberty before the entry into force of the Agreement on 14 December 1995. Recalling *Damjanović v. the Federation of Bosnia and Herzegovina*, the Chamber noted that although it was required to confine its examination of the case to considering whether the human rights of the applicant had been violated or threatened with a violation since that date it could consider events prior to that date in order to assess the general manner in which the applicant's case had been dealt with.

Second, as regards the applicant's complaints concerning his right to life, right not to be treated to inhuman or degrading treatment or punishment and his right not to be required to perform forced or compulsory labour in prison, the Chamber concluded that his complaints were unsubstantiated and did not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement.

Third, as regards non-exhaustion of domestic remedies, the Chamber concluded that the applicant had challenged, through the domestic courts, all decisions pertaining to his detention.

Fourth, as regards his allegations of discrimination, the Chamber concluded that, as he did not allege that he was treated differently on relevant grounds, his complaint concerning discrimination was manifestly ill-founded.

The Chamber declared the application admissible under Articles 5, 6 and 8 of the Convention and declared the remainder of the application inadmissible.

## **Merits**

### *Article 5(1)(c) of the Convention*

The Chamber concluded that for the period from 14 December 1995 to 20 February 1997 the applicant's detention was in accordance with a procedure prescribed by law for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence. However, the Chamber recalled that according to domestic law continued detention must be reviewed *ex officio* by a panel of judges two months after the last decision was taken. For the periods from 20 February 1997 to 9 September 1997 and from 9 November 1997 to 23 July 1998, in the absence of bi-monthly review, the applicant's detention was not in accordance with a procedure prescribed by law and thereby a violation of Article 5(1)(c) of the Convention.

### *Article 5(3) of the Convention*

The Chamber found that in the applicant's case the domestic authorities failed to consider the elements that could have been "relevant and sufficient" to justify continued detention within the meaning of Article 5, paragraph 3 of the Convention. The applicant's detention was based solely on the grounds that there was a reasonable suspicion that the applicant had committed the offence charged and that the applicant faced a sentence of long-term imprisonment if convicted. The Chamber noted that the European Court of Human Rights has consistently stated that such grounds are not "relevant and sufficient" to justify continued detention. As regards the due diligence test, the Chamber held that the administrative running of a legal system is the responsibility of the respondent Party and any delays caused as a result will be directly attributable to the respondent Party. The Chamber also noted that there had been several lengthy periods of inactivity and despite the applicant contributing to some delay, the Chamber concluded that the length of the applicant's detention from 14 December 1995 until the 22 May 2000 exceeded all limits of reasonableness.

### *Article 5(4) of the Convention*

The Chamber found that for the periods of detention from 20 February 1997 to 9 September 1997 and from 9 November 1997 to 23 July 1998 the applicant was prevented from taking proceedings by which the lawfulness of his detention could be decided speedily by a court. Consequently, the respondent Party violated the applicant's rights as guaranteed by Article 5, paragraph 4 of the Convention.

### *Article 6(1) of the Convention*

As regards the applicant's complaint that he was prevented from cross-examining an expert witness during the first trial, the Chamber found that on 20 December 1996 the Court of Second Instance in Bijeljina accepted the applicant's appeal against the first instance judgment in which it specifically stated that by not summoning the expert witness the applicant's rights were violated. Accordingly, the Chamber concluded that any defects in the first trial in this respect were effectively remedied by the retrial proceedings.

As regards the reasonable time requirement, the Chamber found that the facts of the case as presented were not overly complex and could not have been reason enough to delay the proceedings. Secondly, the Chamber repeated that the administrative running of a legal system is the responsibility of the respondent Party and any delays caused as a result will be directly attributable to the respondent Party. The Chamber also noted that there had been several lengthy periods of inactivity and despite the applicant contributing to some delay, the Chamber concluded that the length of proceedings lasting from 14 December 1995 until 22 May 2000 exceeded the limits of reasonableness, thus violating his right to be tried within a reasonable time as guaranteed by Article 6(1) of the Convention.

*Article 6(3)(c) of the Convention*

The Chamber noted that the applicant was without any legal representation for a period of 7 months and the respondent Party provided no adequate explanation for this. In this respect, the Chamber concluded that effective legal representation during this period was strictly necessary and found this to be in violation of Article 6(3)(c) of the Convention.

*Article 8 of the Convention*

As regards the applicant's complaint that the prison authorities interfered with his right to respect for family life, right of access to a telephone and right to correspondence, the Chamber concluded that, in the absence of specific proof to the contrary, his allegations were unsubstantiated. There was therefore no violation of Article 8 of the Convention.

**Remedies**

The Chamber ordered the Republika Srpska to pay to the applicant the sum of KM 3,000 as compensation for non-pecuniary damage. The Chamber dismissed the remainder of the applicant's claims for compensation.

*Decision adopted 11 October 2002*

*Decision delivered 8 November 2002*

**DECISION ON REQUEST FOR REVIEW**

The applicant submitted a request for review in which he argued that (a) the delegation of jurisdictional competence of the Court of First Instance in Srpsko Sarajevo to the Court of First Instance in Sokolac was not in accordance with law and the argument that there were insufficient judges at the Court of First Instance in Srpsko Sarajevo is false; (b) transferring him to the Pre-trial Section of the District Prison in Bijeljina violated his right to respect for family life as guaranteed under Article 8 of the Convention; (c) the Chamber failed to adequately consider his complaint concerning discrimination in that his complaint did not refer to his Serb origin, but the manner in which he was treated by the authorities of the Republika Srpska was in violation of domestic law and therefore amounted to discrimination; and (d) the compensation awarded by the Chamber is insufficient. The Chamber considered that the applicant had failed to give any grounds as to why the issues referred to in the request for review would raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance". As the request for review failed to meet the conditions set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 11 January 2003*

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|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/00/4116 et al.                           |
| <b>Applicants:</b>         | Bisera SPAHALIĆ et al.                      |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and Republika Srpska |
| <b>Date Delivered:</b>     | 7 September 2001                            |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

These cases concern the attempts of the applicants, who are displaced persons of Bosniak descent, to regain possession of their property in Brčko. Pursuant to Annex 2 to the Dayton Peace Agreement, the question of control over Brčko was left open for later international arbitration. Annex 2 further stipulated that, in the meantime, and unless otherwise agreed, the area would continue to be administered as it had been at the time the Dayton Peace Agreement was signed. Each applicant has been trying to regain property that is situated in the northeastern part of the Brčko District that was under the control of the Republika Srpska at the time that the Dayton Peace Agreement was signed.

All of the applicants initiated administrative proceedings before the Republika Srpska authorities to regain possession of their homes in 1999. In the case of three applicants, no response was received from the Republika Srpska authorities; one of these three applicants was reinstated into his apartment by the Brčko District on 15 November 2000. The remaining fourth applicant was reinstated into his apartment by the Ministry for Refugees and Displaced Persons of the Republika Srpska in September 2000.

On 5 March 1999 the Arbitral Tribunal, established under the Dayton Peace Agreement, issued its final award, establishing that Brčko shall be a “self-governing neutral district” under the sovereignty of Bosnia and Herzegovina. The Statute of Brčko, the instrument implementing the Arbitral Award, was adopted on 8 March 2000. On 19 September 2000 a Memorandum of Understanding setting out the responsibilities of the new Department of Urbanism of the Brčko District was signed between the Entities. On that day, responsibility for housing matters was transferred to the Brčko District authorities. The Brčko District Judiciary was established on 1 April 2001.

### **Admissibility**

The Chamber declared the applications admissible insofar as they were directed against Bosnia and Herzegovina in respect of allegations arising under Article 8 and Article 1 of Protocol No. 1 to the Convention after the signing of the Memorandum of Understanding on 19 September 2000 and concerning allegations arising under Articles 6 and 13 of the Convention after the creation of the District of Brčko Judiciary on 1 April 2001. The Chamber rejected the applications as inadmissible insofar as they were directed against Bosnia and Herzegovina in relation to Article 8 and Article 1 of Protocol No. 1 prior to 19 September 2000 and in relation to Articles 6 and 13 prior to 1 April 2001.

The Chamber declared the applications admissible insofar as they were directed against the Republika Srpska in respect of allegations arising under Article 8 and Article 1 of Protocol No. 1 prior to the signing of the Memorandum of Understanding on 19 September 2000, and concerning allegations arising under Articles 6 and 13. The Chamber rejected the applications as being inadmissible insofar as they were directed against the Republika Srpska in relation to Article 8 and Article 1 of Protocol No. 1 after 19 September 2000.

### **Merits**

#### *Article 8 of the Convention*

With respect to the Republika Srpska, the Chamber found that it was legally and practically responsible for handling housing issues until 19 September 2000. The Chamber noted that all of the applicants had to leave their respective homes due to the war, that all of the properties were then occupied by third persons, and that the applicants' attempts to repossess their homes through administrative proceedings were, in three cases totally unsuccessful and, in one case, successful only after prolonged and unjustified delays. Thus the Chamber found that the applicants were unable to regain possession of their homes due to the failure of the authorities of the Republika Srpska to deal effectively with their applications. Consequently, there was a violation by the Republika Srpska of the right of all of the applicants to respect for their homes as guaranteed by Article 8 up until 19 September 2000 when the responsibility for housing matters was transferred from the Republika Srpska to the District of Brčko.

With respect to Bosnia and Herzegovina, given that the District of Brčko is under the direct sovereignty of Bosnia and Herzegovina, it follows that Bosnia and Herzegovina was the respondent Party before the Chamber concerning alleged violations of human rights in the District of Brčko. As for the applicant who regained possession of his apartment by a decision of the Ministry for Refugees and Displaced Persons of the Republika Srpska in 2000, the interference with his right to home ceased prior to the point in time when Bosnia and Herzegovina assumed direct responsibility for the protection of human rights of individuals in the District of Brčko, and thus the Chamber found no interference with his right to home that could be attributed to Bosnia and Herzegovina. As for the applicant who regained possession of his home by virtue of a decision taken by the Brčko District, the Chamber found no interference with his right to home that could be attributed to Bosnia and Herzegovina. As for the remaining two applicants, the Chamber found that Bosnia and Herzegovina failed to resolve their repossession claims within the time limits prescribed by law, and thus that there had been a violation by Bosnia and Herzegovina of their right to respect for their home as guaranteed by Article 8 since 19 September 2000.

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

As for the Republika Srpska, the Chamber found that, given its examination of the case under Article 8 of the Convention, the Republika Srpska had violated the rights of the applicants to peaceful enjoyment of their possessions for as long as it was competent to handle these matters, namely until 19 September 2000.

As for Bosnia and Herzegovina, the Chamber found that the failure of the authorities to act in accordance with the laws in force at the time of the alleged violations in the cases of the two applicants who were unable to repossess their homes was an unjustifiable interference with the applicants' right to peaceful enjoyment of their possessions in relation to the period after 19 September 2000. The Chamber found no interference in the cases of the applicants who were able to repossess their homes that could be attributed to Bosnia and Herzegovina.

*Article 6 of the Convention*

The Chamber noted that from 5 March 1999 until the establishment of the Brčko District Judiciary in April 2001, it was impossible for the applicants to have the merits of their civil actions determined by a tribunal within the meaning of Article 6. In addition, the ambiguity surrounding the competencies of the Republika Srpska courts deprived the applicants of a coherent system that would effectively protect their rights. Thus there was an ongoing violation of the applicants' rights to access to court by the Republika Srpska. Having concluded that the Republika Srpska courts were still responsible for the ongoing proceedings, the Chamber found that Bosnia and Herzegovina could not be held responsible for any violation in respect of Article 6.

*Article 13 of the Convention*

In view of its decision concerning Article 6, the Chamber considered that it did not have to examine the cases under Article 13 of the Convention, which guarantees the right to an effective remedy before a national authority.

## **Remedies**

The Chamber ordered Bosnia and Herzegovina to enable the two applicants who had not already done so to regain possession of their properties without further delay, and to pay them a sum as compensation for loss of use of their homes. The Chamber ordered the Republika Srpska to pay each of the four applicants a sum as compensation for moral damages and for loss of the use of their homes.

*Decision adopted 4 September 2001*

*Decision delivered 7 September 2001*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/00/4295                           |
| <b>Applicant:</b>        | Bećo OSMANAGIĆ                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 April 2002                        |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina. In 1991 he concluded a contract with the company Sarajevostan for the purchase of business premises in Sarajevo. However, to date the applicant has not gained possession of the premises. He introduced a lawsuit against the seller in January 1992. After 15 to 20 hearings and over 9 years of proceedings the Municipal Court I in Sarajevo issued a decision in February 2001, rejecting the applicant's claim. The applicant filed an appeal against the Municipal Court's decision to the Cantonal Court in Sarajevo, which issued a decision by which it sent back the case to the Municipal Court. Before the Chamber, the applicant claimed to be a victim of violations of Articles 2 (right to life), 6 (right to fair trial) and 8 (right to home) of the Convention and Article 1 of Protocol 1 to the Convention, as well as Article 6 (right to work) of the ICESCR.

### Admissibility

Recalling *Medan* as well as *Damjanović* the Chamber found that in so far as the applicant complained that his rights have been violated after 14 December 1995, his complaints were within the competence of the Chamber *ratione temporis*.

The Chamber noted that the applicant had not substantiated his complaints regarding Article 2 and 8 of the Convention. The Chamber further noted that according to Article II paragraph 2(b) of the Human Rights Agreement, the Chamber was not competent to deal with alleged violations of the ICESCR, as the applicant had not claimed to be discriminated against, nor had he submitted any documents or statements which would indicate that he has been discriminated against. The Chamber declared these parts of the application inadmissible as manifestly ill-founded.

The Chamber recalled that according to the European Court of Human Rights "possession" protected under Article 1 of Protocol No. 1 to the Convention can only be "an existing possession" or, at least, an asset which the applicant has a "legitimate expectation" to obtain. Recalling its own case-law, the Chamber stated that it was for the domestic courts to establish whether or not the applicant had the right to gain possession of the premises. As the outcome of the applicant's civil dispute before the domestic courts was uncertain, the Chamber decided that the applicant's claim did not amount to a "legitimate expectation" and thus declared the complaints with regard to Article 1 of Protocol No. 1 to the Convention inadmissible as incompatible *ratione materiae*.

As there was no remedy available to the applicant against the failure of the domestic courts to issue a final decision in applicant's proceedings, the Chamber did not consider that there was any effective remedy available to the applicant which he should have been required to exhaust.

The Chamber declared the part of the application concerning alleged violations of Article 6 of the Convention after 14 December 1995 admissible.

### Merits

#### *Article 6 of the Convention*

As to the merits, the Chamber noted that the applicant had not offered the Chamber evidence indicating that the proceedings were not fair. Further, the Chamber on its own motion could not find any evidence as to the lack of fairness of the courts and therefore found that there had been no violation of the applicant's right to a fair trial.

The Chamber noted that it was not reasonable to expect domestic courts to issue decisions at a normal speed immediately after the cessation of the armed conflict. The Chamber was therefore of the opinion that some delay by the domestic courts in issuing decisions must be accepted. However, the Chamber noted that the present case had been pending for over six years after the armed conflict ended. The Chamber noted that the Municipal Court did nothing to stop Sarajevostan's obstructive conduct in the proceedings before it. Therefore, the Chamber found that the respondent Party, by having tolerated Sarajevostan's conduct, was responsible for the length of the proceedings. The Chamber found a violation of Article 6 paragraph 1 with regard to the length of the proceedings.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to ensure that the Municipal Court decides on the case as a matter of urgency. Furthermore, the Chamber ordered the respondent Party to pay to the applicant the sum of KM 1,500 in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

*Decision adopted 5 March 2002*

*Decision delivered 12 April 2002*

|                          |                      |
|--------------------------|----------------------|
| <b>Cases Nos.:</b>       | CH/00/4566 et al.    |
| <b>Applicants:</b>       | Bajazid JUSIĆ et al. |
| <b>Respondent Party:</b> | Republika Srpska     |
| <b>Date Delivered:</b>   | 7 June 2002          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicants are citizens of Bosnia and Herzegovina. They are all pre-war occupancy right holders of apartments or owners of houses in the Municipality of Bijeljina in Republika Srpska. The cases concern the applicants' attempts to regain possession of their apartments or houses. All applicants lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees, which issued decisions confirming their occupancy rights or ownership as the case may be. However, the competent authorities have failed to execute those decisions.

### **Admissibility**

Recalling that the existence of domestic remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, the Chamber found, on the information before it, that no effective remedy was available to the applicants which could have afforded redress in respect of the breaches alleged and that they were not required to pursue any further remedy provided by domestic law.

### **Merits**

#### *Article 8 of the Convention*

The Chamber found that all of the applicants had lived in the apartments or houses and used them as their homes until such time as they were forced to leave. Recalling the decisions reached in *Onić* and *Kevešević*, the Chamber held that the applicants' apartments or houses are to be considered as their homes for the purposes of Article 8 of the Convention.

The Chamber found that although there was no evidence indicating that, after the entry into force of the Agreement, the authorities of the Republika Srpska took any steps to deprive the applicants of their homes, the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, which may also give rise to positive obligations. In the present cases the Chamber recalled that the CRPC issued decisions confirming the applicants' right to repossess their apartments or houses and that the applicants have been unable to regain possession of their apartments or houses due to the failure of the authorities of the respondent Party. It follows that the result of the inaction of the respondent Party is that the applicants cannot return to their homes and that there is an ongoing interference with the applicants' right to respect for their homes.

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

In accordance with its long-standing jurisprudence, the Chamber found that the applicants' claims concerning the ownership of houses constituted "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. Regarding the occupancy rights over apartments, the Chamber held, following its decision in *M.J.*, that occupancy rights also constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. Additionally, the Chamber considered that the failure of the authorities of the respondent Party to allow the applicants to regain possession of the apartments or houses constituted an "interference" with the right to peaceful enjoyment of that

possession. This interference was ongoing, as the applicants still, at the time of the Chamber's decision, did not enjoy possession of the apartments or houses.

As the Chamber noted in the context of its examination of the case under Article 8 of the Convention, the failure of the competent administrative organ to decide upon the applicants' requests is contrary to the law. This was in itself sufficient to justify a finding of a violation of the applicants' right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicants under this provision has been violated as well.

#### *Articles 6 and 13 of the Convention*

The Chamber held that in light of the findings it made in respect of Article 8 of the Convention, and also in respect of Article 1 of Protocol No. 1 to the Convention, it was not necessary for it to examine the cases under Articles 6 and 13 of the Convention.

#### **Remedies**

The Chamber ordered the respondent Party to take all necessary steps to enforce the CRPC decisions without further delay and at latest within one month from the date on which the Chamber's decision became final and binding.

The Chamber ordered the respondent Party to pay to each of the applicants the sum of KM 1200 Convertible Marks in recognition of their suffering as a result of their inability to regain possession of their apartments or houses. The Chamber further ordered the respondent Party to compensate the applicants for the loss of use of their homes in the amount of KM 200 per month payable from the date which the time-limit for the competent administrative organ to issue a conclusion on the enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged his request up to and including May 2002. In the cases in which the applicants filed the request for enforcement before the Implementation Law entered into force, the Chamber considered it appropriate that this sum should be payable from 30 days after the Implementation Law entered into force, i.e. 30 days after 28 October 1999, up to and including May 2002. This sum should continue to be paid at the same rate until the end of the month in which the applicants regain possession of their apartments or houses.

*Decision adopted 10 May 2002*

*Decision delivered 7 June 2002*

#### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the Chamber erred on a number of grounds. Firstly, in accepting the applications, as they should have been declared inadmissible for non-exhaustion. Secondly, that the Chamber had failed to consider the "chronological order" principle of repossession in the applicants' cases. Thirdly, that the respondent Party was not responsible for the loss of the possession of their apartments or ownership of houses and the damage caused to the applicants. Fourthly, that the amount of compensation for non-pecuniary damages was not in accordance with the previous decisions of the Chamber. Fifthly, that the orders to compensate the applicants for loss of use of their homes were excessive, and finally, that the level of interest applied in the present cases is inconsistent with the economic reality of Bosnia and Herzegovina.

Examining the respondent Party's objections, the Chamber was of the opinion that the request for review failed to meet the second requirement in Rule 64(2), that the whole circumstances justify reviewing the decision, with regard to the "chronological order argument", and fails to meet the first of the two requirements set forth in Rule 64(2) in all other respects. The Chamber thereby rejected the respondent Party's request for review.

*Decision adopted on 6 September 2002*

## **Remedies**

The Chamber ordered the Republika Srpska to enable the applicants to regain possession of their apartments or houses without further delay and at the latest one month after the date on which the decision became final and binding. The Chamber further ordered the Republika Srpska to pay the applicants compensation for non-pecuniary damage, compensation for the loss of use of their homes, and compensation for each further month that they would remain excluded from their apartments or houses.

*Decision adopted 10 May 2002*

*Decision delivered 7 June 2002*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review arguing, *inter alia*, that the applications should have been declared inadmissible for non-exhaustion of domestic remedies; that the Chamber had failed to take into account the “chronological order” principle in the handling of property cases by the authorities; that the respondent Party was not responsible for any loss and that the amount of compensation was excessive.

The Chamber found that the request did not meet the conditions set out in Rule 64 paragraph 2 of its Rules of Procedure and decided to reject the request for review.

*Decision adopted 6 September 2002*

|                          |   |
|--------------------------|---|
| <b>Case No.:</b>         | CH/00/4889                                      |
| <b>Applicant:</b>        | The Islamic Community in Bosnia and Herzegovina |
| <b>Respondent Party:</b> | Republika Srpska                                |
| <b>Other Title:</b>      | “Jakeš Cemetery”                                |
| <b>Date Delivered:</b>   | 12 October 2001                                 |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

During the period of 1996 through 2000, the Institute for Treatment of Mentally Retarded Persons in Garevac in the Modriča Municipality buried the remains of its deceased non-Muslim patients in the Muslim Cemetery in Vukosavlje-Jakeš, which is situated on land owned by the Islamic Community in Bosnia and Herzegovina. The Institute for Treatment of Mentally Retarded Persons also allegedly removed the remains of deceased Muslims previously buried in the Cemetery.

### **Admissibility**

Since the Institute for Treatment of Mentally Retarded Persons is a public body and the respondent Party may be held responsible for its acts, the Chamber found that the application fell within its competence *ratione personae* and declared it admissible.

### **Merits**

#### *Article 9 of the Convention*

First, the Chamber examined Article 9 in isolation. Noting that Bosnian tradition does not usually permit burials of deceased persons of different religions together, the Chamber found that the unauthorised burial of non-Muslims and the erection of crosses in the Jakeš Cemetery, an exclusively Muslim cemetery, without the consent of the Islamic Community, fell within the scope of Article 9 because such actions interfered with the religious practice and observance of the Islamic Community. The Chamber found the unauthorised burial of non-Muslims in an exclusively Muslim cemetery to be provocative and unjustified within the meaning of Article 9 paragraph 2. Thus the Chamber found a violation of Article 9 taken in isolation.

Second, the Chamber examined Article 9 in connection with discrimination. Finding that there was insufficient evidence to support the finding of differential treatment, the Chamber did not find that the respondent Party had discriminated against the Islamic Community with respect to Article 9.

#### *Article 1 of Protocol No. 1*

First, the Chamber examined Article 1 of Protocol No. 1 in isolation. The Chamber found that the burial of non-Muslim patients in the Jakeš Cemetery without the consent of the Islamic Community was an interference with the Islamic Community's right to peaceful enjoyment of its possessions as guaranteed by Article 1 of Protocol No. 1. Since this interference was not lawful, the Chamber found a violation of Article 1 of Protocol No. 1 in isolation.

Second, the Chamber examined Article 1 of Protocol No. 1 in connection with discrimination. For the same reasons discussed with respect to discrimination in connection with Article 9, the Chamber found that there was insufficient evidence for it to find differential treatment in the respondent Party's interference with the Islamic Community's property rights in the Jakeš Cemetery. Accordingly, the Chamber did not find that the respondent Party had discriminated against the Islamic Community

with respect to its right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber found that the findings of violations of Article 9 and Article 1 of Protocol No. 1 constituted sufficient satisfaction.

*Decision adopted 8 October 2001*

*Decision delivered 12 October 2001*

### **DECISION ON REQUEST FOR REVIEW**

The applicant submitted a request for a review, challenging the decision on admissibility and merits in three primary respects. Firstly, it disagreed with the First Panel's finding that its claims for discrimination were not substantiated. Secondly, the applicant complained because the First Panel did not award any compensation for the established violations of Article 9 and Article 1 of Protocol No. 1 to the Convention. Thirdly, the Islamic Community complained because the First Panel had not satisfied the applicant's request to order the respondent Party to exhume, in the presence of the applicant, and at its own expense, all persons of the Orthodox religion buried in Jakeš Cemetery.

The Second Panel noted that the First Panel considered the evidence submitted in support of the application and properly rejected the discrimination claims as unsubstantiated. Thus, the Second Panel was of the opinion that, in this respect, it could not be said "that the whole circumstances justify reviewing the decision" as required by Rule 64 paragraph 2(b) of its Rules of Procedure. The Second Panel however considered that the First Panel had failed to specify what actions the respondent Party should take to remedy the breaches found. The First Panel's stated reliance on the good faith willingness of the respondent Party to cure the actions of the Institute for Treatment of Mentally Retarded Persons that gave rise to the violations found did not, in the opinion of the Second Panel, satisfy the minimum requirements of Article XI paragraph 1(b) of the Agreement. For this reason, the Second Panel concluded that the lack of sufficient remedies in the decision raised "a serious question affecting the ... application of the Agreement", and that "the whole circumstances justify reviewing the decision", as required by Rule 64 of the Chamber's Rules of Procedure.

The plenary Chamber agreed with the Second Panel that the applicant's request for review, insofar as it is directed against the rejection of its discrimination claims as unsubstantiated, did not meet the conditions of Rule 64 paragraph 2 of its Rules of Procedure and therefore did not warrant review. However, the plenary Chamber disagreed with the Second Panel that the applicant's request for review should be granted, insofar as it concerned the question of the remedies ordered by the First Panel. Whether, as the applicant submitted, there should additionally have been an award of compensation and an order for exhumation, in this specific case, did not warrant review. Thus the Chamber found that the request did not meet the conditions set out in Rule 64 paragraph 2, and decided to reject the request for review.

*Decision adopted 10 May 2001*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Cases Nos.:</b>       | CH/00/5134 et al.                    |
| <b>Applicants:</b>       | Muhamed ŠKRGić et al.                |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Other title:</b>      | “Agrokomerc case”                    |
| <b>Date Delivered:</b>   | 8 March 2002                         |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicants Muhamed Škrgić, Raska Ćerimović and Fikret Murtić and the members of the Association for the Protection of Unemployed Shareholders of Agrokomerc (“Shareholders Association”) were employed by the company Agrokomerc in Velika Kladuša. They claimed to hold shares in the company which they allegedly acquired during the period of 1991 until 1994 under the so-called “Marković scheme” for privatisation. Primarily, the applicants alleged that they acquired such shares as partial payment for salaries.

The applicants complained that they were denied their rights to take part in the decision-making process of Agrokomerc and to exercise other shareholder rights since 1994. In addition, on 17 July 1997 the Assembly of the Una-Sana Canton issued a decision that “establishes a list of enterprises in the area of the Una-Sana Canton over which the powers and obligations of the owner on the basis of state capital are performed by the Government of the Canton”. Agrokomerc was included in the list in question. The applicants interpreted this decision as declaring Agrokomerc to be exclusively state-owned. Based upon a conclusion of approval by the Agency for Privatisation of the Federation, on 7 March 2001 Revsar, a company for auditing and consulting in Sarajevo, issued a decision on the results of its renewed audit regarding the transformed ownership of Agrokomerc. In the renewed audit, Revsar concluded that the registered internal share capital was not properly and effectively formed; therefore, Revsar completely cancelled it in favor of state capital in the auditing process. The applicants challenged the validity of both these decisions, and any other official acts that deprived them of their rights as shareholders of Agrokomerc.

### Admissibility

Considering its competence *ratione personae*, the Chamber observed that the Federation had official power and control over the governing bodies of the company and that the actions of these bodies were thus imputable to the Federation. In addition, the Shareholders Association had standing to lodge the application since it was a legal person victim to the alleged violations.

Furthermore, the Chamber found that the event that actually deprived the applicants of their protected possessions was the cancellation of internal shares in favour of state-owned capital, not earlier laws or acts. Since this event occurred after 1995, the Chamber was competent *ratione temporis* to review the application. The allegations of violations of the applicants’ right to work, which pertained to easier events, were however, declared inadmissible.

Reviewing the application for non-exhaustion of effective domestic remedies, the Chamber considered the applicants’ unsuccessful attempts to initiate judicial, administrative and extra-judicial proceedings and observed that no domestic remedy effective in practice was available to the applicants. The Chamber also noted that the six-month period from the final decision complained of had not expired at the time of lodging. Consequently, the Chamber declared the application admissible with regard to alleged violations of the applicants’ right to a fair hearing and the right to peaceful enjoyment of possessions, as guaranteed by Article 6 of the Convention and by Article 1 of Protocol No. 1 to the Convention, respectively.

## Merits

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

The Chamber divided its Article 1 analysis of the applicant's claim into three parts: (1) whether the applicants' claims involved "possessions" protected by the Article; (2) whether there was interference with their enjoyment of their possession; and (3) whether such interference was subject to conditions provided by law. The Chamber first observed that the applicants acquired protected possessions in internal shares of Agrokomerc for which payment was made on the basis of: a) permanent deposits; b) allocations of parts of salaries, either on a monthly basis during the period of 1991 to 1994, or on an annual basis for 1992; and c) distribution of profits for 1992 in proportion to the amount of paid internal shares. However, the Chamber did not recognise any protected possessions of the applicants for internal shares resulting from the conversion of employee claims for reduced salaries from 1987 to 1991 or the conversion of the value of inventory goods.

The Chamber subsequently found that by exercising effective exclusive control over the management of Agrokomerc, the authorities of the Federation interfered with the rights of the applicants to participate in the management and to share in the profits of Agrokomerc in relation to their paid internal shares. In addition, the Chamber held that the Federation did not act "subject to the conditions provided by law", and so concluded that the applicants' rights to enjoyment of possessions secured by Article 1, were violated.

### *Article 6 of the Convention*

The Chamber observed that neither Revsar, nor the Institute for Accounting and Auditing of the Federation, nor the Ministry of Finance of the Federation had offered the applicants any real opportunity to present documents, testimony, or legal argument in writing or in person during the process of the performance of the audit. The Chamber concluded that for lack of actual or effective proceedings in which the applicants had been invited to participate, their rights under Article 6 were violated.

## Remedies

The Chamber designed a remedy that would allow the applicants to regain ownership over their paid internal shares and to exercise the management and participation rights that naturally and legally flowed from these shares. The Chamber made the following orders to the Federation of Bosnia and Herzegovina: a) to take all necessary steps to recognise the applicants as holders of internal shares in relation to the amount of their paid internal shares in Agrokomerc and to enable the applicants to exercise the management rights connected to these shares, as described in the Chamber's decision; b) at its own expense, to employ internationally recognised auditors, in strict compliance with best practice procurement rules for international tenders, to undertake an audit to determine the complete present ownership structure of Agrokomerc, in accordance with the Chamber's decision and in compliance with International Accounting Standards and International Auditing Standards; c) upon completion of the audit, to take all necessary action to ensure that the results of the audit are properly and speedily implemented, including causing the new ownership structure of Agrokomerc to be properly registered, causing individual share certificates to be issued to each applicant in accordance with the Law on Securities of the Federation, and causing a general meeting of the assembly of shareholders to be convened in accordance with the law and at the latest within three months from the delivery of the results of the forensic audit. In addition, the Chamber issued several conclusions as interim measures, which allowed the applicants the opportunity to participate in the management of Agrokomerc until the delivery of the results of the forensic audit. Thus the Chamber ordered that, until the forensic audit is completed, the capital structure of the company be recognised as registered by the competent court in 1991, i.e. 53% share capital and 47% state capital. Further, the Chamber ordered the establishment of an interim supervisory board consisting of 3 members appointed by the Federation and 4 members appointed by the applicants, through the Shareholders Association. The Chamber rejected the applicants' claims for compensation for pecuniary damages, but reserved the right to make additional orders for further remedies.

## **Dissenting Opinion**

Mr. Victor Masenko-Mavi dissented from several of the Chamber's conclusions. He argued that the orders he voted against could have negative consequences for the Agrokomerc joint stock company, because the Shareholders Association would, as a result of them, acquire a privileged position in the management of the company, which in light of the facts of the case was not warranted. The dissenting judge suggested formulating orders more carefully, so as to leave the respondent Party an opportunity to find the most appropriate course of action to remedy the breach.

*Decision adopted 8 February 2002*

*Decision delivered 8 March 2002*

## **DECISION ON REQUEST FOR REVIEW**

The applicants submitted a request for review in which they requested the Chamber to recognise the Shareholders Association as representing all shareholders of Agrokomerc, including those who are not members, and to explicitly refer in its findings to all shareholders. Secondly, the applicants challenged the decision with respect to the conclusion to declare the complaint concerning the applicants' right to work inadmissible. In addition they sought recognition of the conversion of employee claims for reduced salaries paid from 1987 to 1991. The applicants also sought recognition of the conversion of the value of inventory goods as payment for internal shares. In addition they requested the Chamber to empower the interim supervisory board to decide by a simple majority instead of the two-thirds majority as envisaged in the Chamber's decision of 8 February 2002 on the appointment of the management and all issues which according to the Law on Business fall under the competencies of the shareholders' assembly. The applicants requested the Chamber either to remove the existing management of Agrokomerc and to refer all competencies to the interim supervisory board or to order that the management shall be composed of four directors appointed by the Shareholders Association and three directors appointed by the respondent Party.

The respondent Party submitted a request for review in which it stated that it recognised the applicants as holders of paid internal shares, but challenged the validity of the Workers' Council decision on the issuance of internal shares as outside the statutory time limit and therefore void. The respondent Party furthermore did not consider it reasonable that the Chamber gave "majority rights in governing the company during the 'so-called' interim period" to the representatives of the Shareholders Association in the interim supervisory board. Finally, the Federation objected to the unequal position of the shareholders who are not applicants nor members of the Shareholders Association.

The Chamber found that the requests for review did not raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance" as required by Rule 64 paragraph 2(a) of its Rules of Procedure or that the whole circumstances justified reviewing the decision as set forth in the second requirement of Rule 64 paragraph 2. Accordingly, the Chamber decided to reject the requests for review.

*Decision adopted 9 May 2002*

## **DECISION ON FURTHER REMEDIES**

### **(a) Developments subsequent to the decision on admissibility and merits**

As indicated above, the Chamber's decision on admissibility and merits provided for the establishment of a 7 member interim supervisory board for Agrokomerc (with 4 members appointed by the applicants and 3 members appointed by the Federation). For decisions on issues within the general competence of the assembly of shareholders and for changes in the membership of the management a two-thirds majority of 5 was described. The interim supervisory board was established in April 2002 and its first meeting convened in May 2002. Since the establishment, however, the

interim supervisory board has been unable to take any decisions or to carry out any functions. The 4 members appointed by the applicants have been prevented from performing their duties by the management, which has denied them access to the company's documents and premises. Further, the lack of clarity as to whether Agrokomerc is currently governed under the 1995 Law on Enterprises or the 1999 Law on Business Companies appears to have given the management board (appointed by the Federation on 2 August 2001) and the management (appointed by the management board) additional grounds to obstruct any participation in the management of the company by the members of the interim supervisory board appointed by the applicants. The management board continued to function as a supervisory board, while the interim supervisory board established pursuant to the Chamber's decision existed on paper only, without any real power. The applicants repeatedly complained about this state of affairs to the Chamber.

(b) Further remedies

To remedy the situation, the Chamber decided on 5 March 2003, by way of further remedies, *inter alia*, as follows:

- (a) to order the Federation to ensure that the management board of Agrokomerc cease to function, so as to permit the interim supervisory board to carry out its intended function;
- (b) to partly lift the super-majority requirement and to entitle the interim supervisory board, by a simple majority vote, to replace 3 of the current 6 executive directors of the management, to appoint one more executive director to fill a vacant seat on the management and to determine who of the above 4 shall serve as the deputy director of the company.

The Chamber reserved the right to issue such further orders, as it may deem necessary to remedy the violations found in its decision on admissibility and merits.

*Decision adopted 5 March 2003*

*Decision delivered 7 March 2003*

Editors note: A request for review was rejected by the Chamber on 9 May 2003.

**Case No.:** CH/00/5408

**Applicant:** Mina SALIHAGIĆ

**Respondent Party:** Federation of Bosnia and Herzegovina

**Date Delivered:** 11 May 2001

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

In 1986 the applicant obtained the occupancy right over an apartment in Tešanj, which was allocated to her by her employer. Later, the applicant moved from the apartment into another apartment in Tešanj. In 1993 the applicant submitted a request to the owner of both apartments to transfer her occupancy right from the first to the second, which had been declared abandoned. On 2 February 1998 the applicant's employer allocated the second apartment to her and, on 3 February 1998, the Municipal Department for Urban Planning and Housing Affairs of the Municipality Tešanj confirmed the applicant's right to use it. On 17 February 2000 the applicant concluded a purchase contract with her employer over the second apartment, and the applicant's ownership of the second apartment was registered in the land books.

On 4 October 1999, the applicant had lodged a request to repossess the first apartment. On 20 June 2000, the Municipal Department for Urban Planning and Housing Affairs issued a procedural decision allowing the applicant's re-instatement into that apartment. On the same day, it also issued a decision annulling its previous decision of 16 February 2000 and terminated the applicant's right to temporary use of the second apartment. The applicant lodged an appeal against this decision on 30 June 2000. On 10 July 2000 the Municipal Department for Urban Planning and Housing Affairs issued a decision allowing the eviction of the applicant from the second apartment. The Chamber issued an order for provisional measures prohibiting the eviction and the applicant, in fact, was not evicted. On 26 March 2001, the Ministry for Urban Planning, Transport, Communication and Environment of Zenica-Doboj Canton rejected the applicant's appeal against the annulment of the Municipal Department for Urban Planning and Housing Affairs decision of 20 June 2000 on the use of the second apartment. The applicant complained of violations under Articles 6 and 8 of the Convention and Article 1 of Protocol 1 to the Convention.

### **Admissibility**

First, noting that the applicant had made attempts to remedy her situation and that they had remained unsuccessful, the Chamber considered all available and effective remedies exhausted. Second, noting that the applicant had not supplied any evidence to indicate that she sought to make use of any remedy to which Article 6 would be applicable, the Chamber declared the application inadmissible as manifestly ill-founded insofar as it concerned the applicant's alleged violation of Article 6 of the Convention. Third, the Chamber concluded that the application was admissible insofar as it alleged violations of the applicant's right to respect for her home and her right to peaceful enjoyment of her possessions, as guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

### **Merits**

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

The Chamber noted that, whether or not the purchase of the second apartment was in accordance with the law, the applicant was the registered owner of the second apartment and was entitled as a matter of Federation law to exercise the registered ownership rights. As no emergency situation could have justified the eviction of the registered owner, and that there was no other person seeking her eviction or claiming ownership rights to the second apartment, no provision in the domestic law could

be regarded as a basis for the eviction. In addition, as the applicant had vacated the first apartment long before, she could not any longer be considered as a multiple user. Thus the Chamber found that the attempted eviction of the applicant was contrary to the law and that there was a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

#### *Article 8 of the Convention*

For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that the interference with the applicant's right to respect for her home was not "in accordance with the law," and thus that there was a violation of the right of the applicant to respect for her home as guaranteed by Article 8.

#### **Remedies**

The Chamber ordered the Federation to take all necessary steps to secure the applicant's ownership of the second apartment and to prevent her eviction as long as the applicant is registered in the land book as the owner, and to pay the applicant KM 1,000 in respect of non-pecuniary damage.

#### **Dissenting Opinion**

Mr. Manfred Nowak attached a partly dissenting opinion in which he argued that the Chamber's order to secure the applicant's ownership of her apartment and to prevent her eviction should not have been qualified by the limitation, "as long as the applicant is registered in the land books as the owner," which he felt seemed to encourage the Federation to pursue its legal actions aimed at depriving the applicant of her registered ownership rights.

*Decision adopted 8 May 2001*

*Decision delivered 11 May 2001*

|                          |   |
|--------------------------|---|
| <b>Case No.:</b>         | CH/00/5480  |
| <b>Applicants:</b>       | Aziz DAUTBEGOVIĆ and 51 Other Villagers from Duge |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina              |
| <b>Date Delivered:</b>   | 6 July 2001                                       |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicants are villagers of Bosniak origin living in Duge, Prozor-Rama Municipality, the Federation. The village is located near the Krupić Spring on the banks of the Buk River which flows into the Duščica Stream, forming two waterfalls along the way. The village is named for the rainbows that often appear in the sky above the waterfalls and the area is renowned for its natural beauty. The applicants consider the river and its waterfalls to be an integral part of their lives. They are farmers in a rural area who support themselves through agricultural production for which they depend upon the river. The case concerns the alleged threat of imminent damage to the applicants' homes, livelihood, and well-being resulting from the planned construction of a hydro-electric power plant near their village and within a protected site of natural heritage assets. This construction was approved by the Prozor-Rama Municipality, and the investors in the power plant project obtained, among other approvals, a certificate on conditions of regional development issued on 13 May 1996 and a building permit issued on 14 May 1996.

The applicants claimed that if the planned construction of the power plant was allowed to go forward, their rights protected under Articles 8, 6, and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention would be violated. The applicants further alleged that they suffered discrimination based on their ethnic origin in the enjoyment of these rights. On 4 September 2000, the Chamber ordered the respondent Party, as a provisional measure, to take all necessary measures to ensure that the construction works on the planned hydro-electric power plant near the village of Duge be stopped. The Chamber subsequently extended the provisional order until such time as it would adopt its final decision in the case or withdraw the order.

### Admissibility

First, noting that the permit for use of the land for construction of the power plant was issued after the Dayton Peace Agreement entered into force, the Chamber found that the application fell within its competence *ratione temporis*. Second, the Chamber found that the applicants could not be required to exhaust any further domestic remedies. Third, noting that the power plant had not been built, and that there had not been any substantiation of the allegation that the power plant would interfere with the property of the applicants, the Chamber declared the applicants' claims under Article 1 of Protocol No. 1 to the Convention inadmissible as manifestly ill-founded. Fourth, noting that the applicants had never sought to have their rights determined in any civil court, the Chamber declared their claims under Article 6 of the Convention inadmissible as manifestly ill-founded. Fifth, noting that a *prima facie* case did not exist against the respondent Party for discrimination, the Chamber declared the applicants' allegations of discrimination inadmissible as manifestly ill-founded. Finally, the Chamber declared the applicants' remaining claims admissible.

### Merits

#### *Article 8 of the Convention*

The Chamber first considered whether there was an interference with the applicants' right to respect for private and family life and home. The Chamber found that construction of the power plant would interfere with the protected natural heritage assets near the village of Duge. Considering the relevant case-law of the European Court of Human Rights, the Chamber found that it may be argued that the

applicants are entitled to protection under Article 8 for their traditional way of living as farmers in a rural area protected as an asset of natural heritage. Thus the Chamber found that the respondent Party's approval of construction of the power plant near the village of Duge in a location that would directly affect the applicants' traditional way of living constituted an interference with their rights to private and family life and home protected by Article 8.

The Chamber next examined whether the respondent Party's interference with the applicants' protected rights was justified by the requirements of Article 8 paragraph 2. The Chamber noted that at the time of the interference, two sets of laws concerning the protection of nature and physical planning were being applied on the territory of the Federation: one set passed by the authorities of the former Republic of Bosnia and Herzegovina and the other set passed by the authorities of the former "Croat Community of Herceg-Bosna." The Chamber considered each set of laws individually in analyzing whether the interference with the applicants' rights was "in accordance with the law." The Chamber found that under both sets of laws, the competent authorities failed to obtain necessary approval for the protection of nature from the governmental body responsible for such protection service and failed to allow the applicants an opportunity to participate in the administrative proceedings surrounding issuance of the construction approvals. Thus the interference with the applicants' protected rights was not in accordance with the law and the respondent Party violated the applicants' rights under Article 8.

### **Remedies**

The Chamber ordered the Federation, should further steps be necessary for the protection of the applicants' rights in relation to the natural heritage assets near the village of Duge, to prevent construction of buildings or other objects at the site of protected natural heritage assets unless permission for such construction was granted in accordance with the law. The Chamber also ordered the Federation to pay to the applicants one lump sum amount of KM 2,000 for total compensation for their legal costs and expenses.

*Decision adopted 2 July 2001*

*Decision delivered 6 July 2001*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/00/6134                           |
| <b>Applicants:</b>       | Vojislav ŠTRBAC and 3 Others         |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 6 September 2002                     |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The application concerns the rights of the applicants, who are siblings of Serb origin, to use and to construct upon certain socially-owned real property situated in the Municipality of Bosanska Krupa in the Federation of Bosnia and Herzegovina, upon which existed orchards and a few residential houses. Prior to its nationalisation, the real property in question was owned by the applicants' father, and in 1990, the applicants inherited the remaining post-nationalisation property rights in it, including a priority right to construct. Due to the armed conflict, the applicants who were living in the vicinity were forced to depart from their real property and re-locate to the Republika Srpska. On 25 August 1997, the Municipal Council of the Municipality of Bosanska Krupa issued two procedural decisions, the first seizing a part of the applicants' real property and the second allocating that seized real property to five paraplegic war veterans of Bosniak origin for the construction of residential housing. The interests of the applicants were represented in these administrative proceedings by a "representative of the former possessors", who was appointed by the Municipality of Bosanska Krupa. The applicants knew nothing about these proceedings until April 2000. Immediately thereafter, the applicants submitted a proposal for renewed proceedings to the Municipal Council. They have received no response to this proposal to date. On 13 May 2002, the Court of First Instance in Bosanska Krupa issued a procedural decision awarding the applicants compensation for the seized real property, but the applicants claimed that the awarded amount of compensation was insufficient.

On 26 May 1999, the High Representative issued a Decision suspending the power of domestic authorities to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities. That Decision was later revoked and superseded by the Decision of the High Representative of 27 April 2000, which provides that domestic authorities may not, *inter alia*, dispose of, allot, transfer, or give for use any "state-owned real property, including former socially-owned property". Both Decisions declare any such decision made after 6 April 1992 which affects the rights of refugees and displaced persons to be "null and void, unless a third party has undertaken lawful construction work". On 10 October 2000, the Chamber issued an order for provisional measures protecting the seized real property in question. None the less, in violation of that order, the third parties who had been allocated the real property have undertaken the construction of at least six houses on the seized real property of the applicants.

### Admissibility

Recalling that the existence of domestic remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, the Chamber found, on the information before it, that no effective remedy was available to the applicants which could have afforded redress in respect of the breaches alleged and that they were not required to pursue any further remedy provided by domestic law.

As regards the six-month rule, the Chamber noted that the final procedural decisions which seized and allocated the applicants' real property were issued by the Municipal Council on 25 August 1997. However, the proceedings leading up to the issuance of these decisions were conducted *in absentia* of the applicants. Prior to 25 August 1997, the Municipality of Bosanska Krupa made no efforts to locate the applicants and there was no evidence to indicate that the respondent Party took any

further action to ensure that the applicants were made aware of the procedural decisions of 25 August 1997.

The Chamber considered that the six-month rule began to run when the applicants first learned about the final decisions in April 2000 and the application was filed with the Chamber within six months after April 2000.

## **Merits**

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

The Chamber observed that the character of the priority right to construct upon undeveloped building land, as defined in the domestic law, indicates that it is a valuable, transferable property right. Therefore, as in its previous cases concerning the priority right to construct upon developed building land, the Chamber held that a priority right to construct upon undeveloped urban building land is an enforceable right with an economic value which is a “possession” within the meaning of Article 1 of Protocol No. 1.

The Chamber held that regardless of which of the three rules set forth in Article 1 of Protocol No. 1 is applied in a given case (*i.e.*, interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1 to the Convention.

In issuing the procedural decisions of 25 August 1997, which seized and allocated the applicants’ real property to third parties, the respondent Party failed to fully comply with domestic law. In addition, by continuing to implement the procedural decisions after 26 May 1999, the respondent Party contravened the Decision of the High Representative of that date and the subsequent Decision of 27 April 2000; thus, it failed to act lawfully. The respondent Party further failed to implement the Chamber’s order for provisional measures of 10 October 2000. By failing to satisfy the principle of lawfulness contained within Article 1 of Protocol No. 1 to the Convention, it was unnecessary for the Chamber to consider further the remaining requirements of this Article. Accordingly, the Chamber decided that the respondent Party had violated the applicants’ right as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### *Article 8 of the Convention*

Taking into consideration its conclusion that the respondent Party has violated the applicants’ right protected by Article 1 of Protocol No. 1 to the Convention, the Chamber decides that it is not necessary separately to examine the application under Article 8 of the Convention.

### *Article 6(1) of the Convention*

The Chamber recalled that the right of access to court constitutes an element, which is inherent in the right stated by Article 6(1) of the Convention. However, it noted that the right of access to a court enshrined in Article 6 is not absolute; it may be subject to certain limitations since the right by its very nature calls for regulation by the State. Nonetheless, such limitations must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. In the present case the Chamber observes that the Municipality of Bosanska Krupa conducted the proceedings leading up to the seizure and allocation of the applicants’ real property *in absentia* of the applicants. The Chamber recognised that in certain circumstances it may be reasonable and necessary for the domestic authorities to conduct proceedings *in absentia* of an interested party. However, in the present case, the applicants had been given no actual opportunity to participate in the proceedings which unlawfully deprived them of their property rights, and the temporary representative appointed on their behalf by the Municipality of Bosanska Krupa may not, it appears, have adequately protected their interests. Nor had the Municipality of Bosanska Krupa responded to the applicants’ proposal for renewed proceedings, which was submitted in April 2002.

In these circumstances, the Chamber considered that the respondent Party has failed to provide the applicants with access to a court for the determination of their property rights. Therefore, the Chamber found that the respondent Party had violated the applicants' rights as guaranteed by paragraph 1 of Article 6 of the Convention.

### **Discrimination**

The Chamber held that, based on the record before it, the applicants had been deprived of their possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention, on the ground that they were displaced persons of Serb origin from a predominantly Bosniak municipality. The respondent Party had provided no reasonable or objective justification for this treatment, and the Chamber can find no such justification on its own. The Chamber found, however, rather than securing the applicants' human rights, as it was obliged to do, the Municipality of Bosanska Krupa took advantage of the applicants' status as displaced persons. The Chamber observed that a pattern of discrimination against the applicants, all of Serb origin living in a majority Bosniak municipality, existed. Therefore, the Chamber concluded that the applicants had been discriminated against in the enjoyment of their rights protected by Article 1 of Protocol No. 1 to the Convention.

### **Remedies**

The Chamber noted that the Court of First Instance in Bosanska Krupa determined that compensation in the amount of 69,192.00 KM shall be paid to the applicants for their seized real property. In addition, 3,487.50 KM shall be paid to the applicants as compensation for perennial fruit and nut trees, plus 543.60 KM as compensation for a hedge. None the less, the applicants were to be provided with a remedy for the violation of their human rights protected by Article 1 of Protocol No. 1 and Article 6 of the Convention and Article II(2)(b) of the Agreement.

In light of the facts before it, the Chamber ordered the respondent Party to pay to the applicants the lump sum amount of 25,000 KM as compensation for non-pecuniary damages suffered by them as a result of the violations of their human rights. This amount was to be paid in addition to the compensation award determined by the Court of First Instance in Bosanska Krupa in its procedural decision of 13 May 2002. In addition, the respondent Party was ordered to take all necessary action to ensure that the compensation awarded to the applicants in the procedural decision of 13 May 2002 is paid to the applicants within one month from the date on which the Chamber's decision became final and binding.

The Chamber further ordered the respondent Party to take all necessary action to ensure, as soon as practicable and at the latest within one month from the date on which its decision became final and binding, that the applicants are reinstated into full possession of all their remaining real property situated in the Municipality of Bosanska Krupa, excluding the real property which was seized by the Municipal Council in its procedural decision of 25 August 1997. Therefore, the respondent Party shall, to the fullest extent under the law, allow the applicants to return home to the Municipality of Bosanska Krupa, with no further interference with their human rights and no further discrimination against them.

*Decision adopted 2 September 2002*  
*Decision delivered 6 September 2002*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the Chamber erred in its assessment of the facts when it found a pattern of discrimination against the applicants, who are of Serb origin. Secondly, the respondent Party contended that the appointment of a temporary representative was not manifestly against the applicants' rights. Thirdly, the respondent Party argued that the Chamber accepted the applicants' feeling that they have been treated differently from others of different ethnic or national origin who were in the same or a relevantly similar position. However, according to the respondent Party, no evidence was submitted to render those statements of

“personal feeling” credible. Fourthly, the respondent Party submitted that the applicants failed to exhaust effective domestic remedies because, by initiating proceedings to establish the amount of compensation for their seized real property, they accepted the procedural decision on the seizure of the real property in question. Moreover, they failed to file a lawsuit initiating an administrative dispute for the annulment of the seizure of their real property. Fifthly, the respondent Party argued that the Municipality of Bosanska Krupa acted lawfully and with good intention at all times. Sixthly, with respect to the length of proceedings to determine the amount of compensation for the seized real property, the respondent Party argues that its organs could not reach a “speedy resolution” of the issue of compensation “exclusively due to the applicants’ failure to accept the [proposed] compensation”. The respondent Party further notes that the decision of the Court of First Instance in Bosanska Krupa on compensation of 13 May 2002 became effective on 14 June 2002, when the applicants did not appeal against it, “meaning that they fully accepted the Court’s decision”. The established sum has not been paid to the applicants because they have failed to submit their bank account information. In addition, the applicants have failed to initiate proceedings for enforcement of payment of the compensation.

Examining the respondent Party’s objections, the Chamber was of the opinion that the request for review failed to meet either of the two requirements set forth in Rule 64(2) that “the whole circumstances justify reviewing the decision” or that the request for review raises “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”. Accordingly, the Chamber rejected the request.

*Decision adopted on 6 November 2002*

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| <b>Case No.:</b>         | CH/00/6142                           |
| <b>Applicants:</b>       | Dušan and Mila PETROVIĆ              |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 March 2001                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicants, who are husband and wife, are citizens of Bosnia and Herzegovina. Mr. Petrović is the owner of a house in Mostar. The applicants left the house due to the outbreak of the war, and three different families moved into the house. The case concerns the applicants' attempts to regain possession of the house. Mr. Petrović lodged an application to the CRPC, which issued a decision recognising his ownership. Mr. Petrović filed a request for repossession on the basis of the CRPC decision to the competent municipal organ. While the efforts of the applicants to have the CRPC decision enforced remained unsuccessful, the competent municipal organ, in separate administrative proceedings, issued a decision ordering one of the occupants to vacate the ground floor of the house. The eviction of the occupants on the ground floor was carried out, but the applicants were unable to move into the vacated space because the occupants had allegedly looted it. At the time of the Chamber's consideration, other persons were still occupying the rest of the house.

### **Admissibility**

Noting that the applicants had made repeated attempts to have the CRPC decision enforced and they had been unsuccessful, the Chamber was satisfied that the applicants could not be required to pursue any further remedy provided by domestic law, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber noted that under the Law on Implementation of the Decisions of the CRPC the competent administrative organ is obliged to issue a conclusion on permission of enforcement within a period of thirty days from the date when the request for enforcement is submitted. At the time of the Chamber's consideration, Mr. Petrović had still not received a decision on his request to have the CRPC decision enforced, despite the time-limit for this having expired over fourteen months before. Thus the failure of the competent administrative organ to decide upon Mr. Petrović's request was not "in accordance with the law" and there was a violation of the rights of the applicants to respect for their home as guaranteed by Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8 of the Convention, the Chamber found that the failure of the competent administrative organ to decide upon Mr. Petrović's request was contrary to the law, and thus that there was a violation of his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to enforce the CRPC decision and to enable the applicants to regain possession of the entire house without any further delay; to pay to the applicants jointly KM 2,000 in respect of non-pecuniary damage; to pay to the applicants jointly KM 1,500 as compensation for the loss of use of the apartment and for any extra costs during the

time the applicants had been forced to live in alternative accommodation until the end of March 2001; and to pay to the applicants jointly KM 100 for each further month that they continued to be forced to live in alternative accommodation from 1 April 2001 until the end of the month in which they would be reinstated.

*Decision adopted 6 March 2001*

*Decision delivered 9 March 2001*

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|--------------------------|--------------------------------------|
| <b>Cases Nos.:</b>       | CH/00/6143 and 6150                  |
| <b>Applicants:</b>       | Mara TURUNDŽIĆ and Smiljka FRANČIĆ   |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 8 February 2001                      |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicants are citizens of Bosnia and Herzegovina. They are both the pre-war occupancy right holders of apartments in Mostar. Both applicants left their apartments due to the war hostilities. The cases concern their attempts to regain possession of their apartments. Both applicants lodged applications to the CRPC, which issued decisions recognising their occupancy rights. Both applicants filed requests for the execution of the CRPC decisions before the competent municipal organ, but did not receive any response. At the time of the Chamber's consideration, the CRPC decisions had not been executed.

### **Admissibility**

Noting that the applicants had made repeated attempts to have the CRPC decisions enforced and they had been unsuccessful, the Chamber was satisfied that the applicants could not be required to pursue any further remedy provided by domestic law, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber noted that under the Law on Implementation of the Decisions of the CRPC the competent administrative organ is obliged to issue a conclusion on permission of enforcement within a period of thirty days from the date when the request for enforcement is submitted. At the time of the Chamber's consideration, the applicants had still not received a decision on their requests to have the CRPC decisions enforced, despite the time-limit for this having expired fifteen months before. Thus the failure of the competent administrative organ to decide upon their requests was not "in accordance with the law" and there was a violation of the rights of the applicants to respect for their home as guaranteed by Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8 of the Convention, the Chamber found that the failure of the competent administrative organ to decide upon the applicant's requests was contrary to the law, and thus that there was a violation of their right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to enable the applicants to regain possession of their apartments without further delay; to pay to each of the applicants KM 2,000 in respect of non-pecuniary damage; to pay to each of the applicants KM 1,600 as compensation for the loss of use of the apartments and for any extra costs during the time the applicants have been forced to live in alternative accommodation; and to pay to each of the applicants KM 100 for each further month that they continued to be forced to live in alternative accommodation as from 1 March 2001 until the end of the month in which they would be reinstated.

*Decision adopted 5 February 2001*

*Decision delivered 8 February 2001*

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| <b>Case No.:</b>         | CH/00/6144                           |
| <b>Applicants:</b>       | Vlado and Matija LEKO                |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 9 March 2001                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual Background**

The applicants, who are husband and wife, are citizens of Bosnia and Herzegovina. Mr. Leko is the co-owner of a house in Mostar. The applicants left the house due to the war hostilities. The case concerns their attempts to regain possession of the house. Mr. Leko lodged an application to the CRPC, which issued a decision recognising that he was the co-possessor of the house and that he had the right to regain possession over the house. Mr. Leko filed a request for the execution of the CRPC decision and a claim for repossession with the competent municipal organ, but received no response. At the time of the Chamber's consideration, the CRPC decision had not been executed.

### **Admissibility**

Noting that the applicants had made repeated attempts to have the CRPC decision enforced and they had been unsuccessful, the Chamber was satisfied that the applicants could not be required to pursue any further remedy provided by domestic law, and declared the case admissible.

### **Merits**

#### *Article 8 of the Convention*

The Chamber noted that under the Law on Implementation of the Decisions of the CRPC the competent administrative organ is obliged to issue a conclusion on permission of enforcement within a period of thirty days from the date when the request for enforcement is submitted. At the time of the Chamber's consideration, the applicants had still not received a decision on their requests to have the CRPC decisions enforced, despite the time-limit for this having expired eleven months before. Thus the failure of the competent administrative organ to decide upon their requests was not "in accordance with the law" and there was a violation of the rights of the applicants to respect for their home as guaranteed by Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8 of the Convention, the Chamber found that the failure of the competent administrative organ to decide upon the applicant's requests was contrary to the law, and thus that there was a violation of their right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

### **Remedies**

The Chamber ordered the Federation to take all necessary steps to enforce the CRPC decision and to enable the applicants to regain possession of Mr. Leko's house without any further delay; to pay to the applicants jointly KM 2,000 in respect of non-pecuniary damage; to pay to the applicants jointly KM 1,100 as compensation for the loss of use of the house and for any extra costs during the time the applicants had been forced to live in alternative accommodation until the end of March; and to pay to the applicants jointly KM 100 for each further month that they continued to be forced to live in

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alternative accommodation as from 1 April 2001 until the end of the month in which they would be reinstated.

*Decision adopted 7 March 2001*

*Decision delivered 9 March 2001*

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| <b>Case No.:</b>           | CH/00/6258  |
| <b>Applicant:</b>          | Neđo BABIĆ  |
| <b>Respondent Parties:</b> | Federation of Bosnia and Herzegovina and Republika Srpska |
| <b>Date Delivered:</b>     | 6 July 2001   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual Background

The applicant was the pre-war occupancy right holder over an apartment in Sanski Most, the Federation. On 6 April 1999 the Service of Spatial Planning and Environment Protection of Municipality Sanski Most issued a decision confirming the applicant's occupancy right over the apartment in the Federation and ordering the temporary occupant to vacate it within 90 days. On 7 September 1999 the applicant requested the Service of Spatial Planning and Environment Protection of Municipality Sanski Most to enforce its decision of 6 April 1999. The applicant finally repossessed the apartment in the Federation on 10 April 2001.

Meanwhile, the applicant was the temporary occupant of an apartment in Gradiška, the Republika Srpska, of which the allocation right holder was the Fund for Pension and Disability Insurance of the Republika Srpska. On 16 September 1996 this Fund had allocated the apartment in the Republika Srpska to the applicant, because he had left the the apartment in the Federation in 1995 due to the hostilities and was homeless. On 31 August 2000 a previous occupancy right holder requested the the Fund for Pension and Disability Insurance of the Republika Srpska to allocate the apartment in the Republika Srpska to her again, because she had no other place to live. On 28 September 2000 the the Fund for Pension and Disability Insurance of the Republika Srpska granted the previous occupancy right holder's request, and the applicant was ordered to vacate the apartment. On 27 November 2000 the applicant appealed to the Ministry for Refugees and Displaced Persons of the Republika Srpska in Banja Luka, but received no answer. The Ministry did not issue an eviction order.

The applicant argued that his eviction from the apartment in the Republika Srpska and his repossession of the apartment in the Federation should have been coordinated, so that he would not be evicted from the apartment he was temporarily occupying before he was reinstated into his pre-war home.

### Admissibility

Regarding the applicant's complaints against the Federation, the Chamber noted that the use of the remaining available domestic remedies, even if successful, would not remedy the applicant's complaints insofar as they related to the failure of the authorities of the Federation to enforce the decision of 6 April 1999, and found that the applicant could not be required to pursue any further remedy provided by domestic law. As for the applicant's complaints with regard to Articles 6, 13 and 14 of the Convention, the Chamber found that there was no *prima facie* case against the Federation and declared them inadmissible as manifestly ill-founded. Thus the Chamber declared the case admissible against the Federation with respect to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Regarding the applicant's complaints against the Republika Srpska, the Chamber noted that the applicant's occupancy right over the apartment in the Republika Srpska was cancelled in accordance with the law, and therefore that there was no *prima facie* case against the Republika Srpska. Thus the Chamber declared the applicant's complaint manifestly ill-founded and inadmissible in its entirety as against the Republika Srpska.

## **Merits**

### *Article 8 of the Convention*

Noting that under the Law on Administrative Proceedings, the Service of Spatial Planning and Environment Protection of Municipality Sanski Most was obliged to decide upon the applicant's request of 7 September 1999 and to dispatch such a decision within 30 days, but that it issued an eviction order more than 16 months after the deadline expired, the Chamber found that the interference with the applicant's right to respect for his home was not "in accordance with the law" and thus that there was a violation of Article 8.

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

For the same reasons as given in the context of its examination of the case under Article 8 of the Convention, the Chamber found that the failure of the authorities of the Federation to enforce the decision of 6 April 1999 was not justified, and thus that there was a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

## **Remedies**

Although the applicant had already been reinstated while his case was under consideration and although he had not submitted any claim for compensation, the Chamber ordered the Federation to pay him KM 1,200 by way of compensation for moral damage suffered. In so doing, the Chamber observed that "neither Article XI(1)(b) of the Agreement nor Rule 59 of the Chamber's Rules of Procedure precluded the Chamber from ordering remedies that have not been requested by an applicant". Given that the protracted delay in his reinstatement had been caused by the respondent Party, the Chamber considered it appropriate to order the Federation to compensate him for the resulting mental distress.

*Decision adopted 3 July 2001*

*Decision delivered 6 July 2001*

## **DECISION ON REQUEST FOR REVIEW**

The respondent Party's request for review had not been lodged within one month from the date of delivery of the Chamber's decision and the Chamber pointed out that it had no discretion to decide to extend the time limit provided for submission of such request. Therefore the request did not meet the condition set out in Rule 63 paragraph 3(a) of its Rules of Procedure and the Chamber decided to reject request for review.

*Decision adopted 12 December 2001*

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|--------------------------|--------------------------------------|
| <b>Cases Nos.:</b>       | CH/00/6436 and 6486                  |
| <b>Applicants:</b>       | Đulba KRVAVAC and Danica PRIBIŠIĆ    |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 5 July 2002                          |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicants are citizens of Bosnia and Herzegovina of Bosniak and Serb origin. They are pre-war occupancy right holders of apartments in the municipalities Mostar Southwest and Mostar West. The cases concern the applicants' attempts to regain possession of their apartments. The applicants have lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees, which has issued decisions confirming their occupancy rights.

The cases primarily raise issues of discrimination in relation to Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention as well as under Articles 14, 17 and 26 of the International Covenant on Civil and Political Rights. The applications also raise issues in relation to the aforementioned Convention provisions in isolation.

### **Admissibility**

The respondent Party argued that the applicants had lodged their applications with a view to regaining possession of the apartments over which they held an occupancy right and the applicants had regained possession of their apartments while the cases were still pending before the Chamber. It was therefore the opinion of the respondent Party that the matter had been resolved.

The Chamber recalled in the *S.P.* decision, that where it appears that the domestic authorities have taken appropriate and effective action in good faith and where the applicants have in fact been reinstated, although not within the time-limit established by law, the Chamber may be persuaded to strike out the application. The Chamber is of the opinion that such an approach, given the circumstances prevailing in the country, does not run counter to the objective of ensuring respect for human rights. However, considering the special circumstances of the applicants' situation regarding their human rights and the evidence of a systematic disregard for human rights in the territory of the applicants' apartments, the Chamber considered that the main issue raised in the applications required the examination of the applications to be continued.

Recalling that the existence of domestic remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, the Chamber found, on the information before it, that no effective remedy was available to the applicants which could have afforded redress in respect of the breaches alleged and that they were not required to pursue any further remedy provided by domestic law.

### **Merits**

*Discrimination in the enjoyment of the applicants' right to equal protection of the law, to respect for their homes and to the peaceful enjoyment of their possessions.*

The Chamber noted that the applicants were holders of occupancy rights over apartments in which they lived until such times as they were forced to leave due to the armed conflict. In accordance with the constant jurisprudence of the Chamber, these occupancy rights were to be considered assets which constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, and the apartments of the applicants are to be considered their homes within the meaning of Article 8 of the Convention as well as Article 17 of the ICCPR.

The applicants alleged that the systematic policy of obstructing minority returns in the municipalities of Mostar West and Mostar Southwest constituted discrimination, on the grounds of their ethnic origin, in the enjoyment of their rights to protection of their homes and possessions, as well as in their right to equal protection of the law within the meaning of Article 26 of the ICCPR and their right to an effective remedy within the meaning of Article 13 of the Convention.

The Chamber recalled that in examining whether there has been discrimination contrary to the Agreement, the Chamber has consistently found it necessary first to 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. In the present cases, the unchallenged statements submitted by the applicants established that the competent administrative and political organs in the municipalities of Mostar West and Mostar Southwest pursued a deliberate policy of preventing minority returns by, *inter alia*, not processing the claims of persons of Bosniak and Serb origin to repossess their pre-war apartments. The discrimination found had also barred the applicants, for a long time, from returning to their homes and property within the meaning of Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, as well as Article 17 of the ICCPR. The Chamber concluded that the applicants had been discriminated against in the enjoyment of their rights under Articles 17 and 26 of the ICCPR and Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

#### *Article 8 of the Convention*

The Chamber recalled that it was already established that the applicants' apartments were to be considered as their homes for the purposes of Article 8 of the Convention. The Chamber noted the respondent Party's assertion that it had passed legislation which enabled all persons to repossess their property and that therefore there had been no violation of Article 8 of the Convention. However, the passivity shown by the municipal authorities in response to the applicants' various petitions aiming at enabling them to re-enter apartments which they indisputably were entitled to possess amounted to a lack of respect for their "home" within the meaning of Article 8(1) of the Convention. The respondent Party had made no attempt to justify this lack of respect. Nor could the Chamber find any such justification on its own motion. The Chamber therefore concludes that the applicants' rights under Article 8 of the Convention in isolation had also been violated.

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

The Chamber recalled that it had already recognised that the applicants' rights in respect of the apartments constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

The Chamber noted that Article 1 of Protocol No. 1 to the Convention may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights. Such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction. In the present cases, the Chamber was concerned with a failure by the authorities to protect the applicants, for a period of 26 and 24 months, respectively, against a continuing unlawful occupation of their possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1. Accordingly, the Chamber found, for essentially the same reasons as in relation to Article 8 of the Convention, that this failure, during this lapse of time, of the authorities to assist the applicants in recovering their property also amounted to a violation of their rights under Article 1 of Protocol No. 1 to the Convention in isolation.

#### *Articles 6 and 13 of the Convention and Article 14 of the ICCPR*

The Chamber found that the applicants have been discriminated against in the enjoyment of their rights protected under Articles 17 and 26 of the ICCPR and Articles 8 and 13 of the Convention and

Article 1 of Protocol No. 1 to the Convention. The Chamber also found that the respondent Party violated the rights of the applicants protected by Article 8 of the Convention, Article 1 of Protocol No. 1 in isolation. Considering these findings, the Chamber did not consider it necessary separately to examine the applications under Articles 6 and 13 of the Convention and Article 14 of the ICCPR.

### **Remedies**

The Chamber ordered the respondent Party to pay to each of the applicants the sum of 1200 Convertible Marks as compensation for non-pecuniary damages in recognition of their suffering as a result of their inability to regain possession of their apartments in a timely manner and as a result of being subjected to unlawful discrimination. The Chamber further ordered the respondent Party to pay to the first applicant the sum of KM 5200 and to the second applicant the sum KM 4600 by way of compensation for the time periods of 26 and 24 months, respectively, between the date they filed request of enforcement of their CPRC decisions and the date when they have been reinstated into their apartments.

Finally, the Chamber ordered the respondent Party to take all necessary measures to ensure respect for and implementation of Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments, including investigations and appropriate penalties for the officers and other persons responsible for the systematic policy of discrimination and obstruction of minority returns in the municipalities of Mostar West and Mostar Southwest.

*Decision adopted 3 July 2002*  
*Decision delivered 5 July 2002*

### **DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that the Chamber erred in its decision not to strike out the applications. This, it argued, was not in accordance with the previous decisions of the Chamber, in cases where the applicants had been reinstated into possession of their apartments. Secondly, that it was not necessary to award compensation for non-pecuniary and pecuniary damage, as the finding of violations of the Convention would have been already an adequate remedy. Thirdly, that the amounts of compensation were not in accordance with the previous decisions of the Chamber. Fourthly, that the respondent Party was not responsible for the loss of the possession of their apartments and the damage caused to the applicants.

Examining the request for review, the Chamber was of the opinion that the respondent Party had failed to give any grounds as to why the issues referred to in the request for review would raise “a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance”. With regard to the decision not to strike out the applications, the Chamber noted that the Second Panel applied the criteria set forth by the plenary Chamber in the *S.P.* decision. Furthermore, the Chamber found that the Second Panel did not attach any responsibility for the loss of the possession of the applicants’ apartments but for the impossibility of the applicants to repossess their apartments. Therefore, the request for review failed to meet the first of the two requirements set forth in Rule 64(2) of the Chamber’s Rules of Procedure.

*Decision adopted 6 September 2002*

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|--------------------------|-------------------------------|
| <b>Cases Nos.:</b>       | CH/00/6444 et al.             |
| <b>Applicants:</b>       | Nedo and Saveta TRKLJA et al. |
| <b>Respondent Party:</b> | Bosnia and Herzegovina        |
| <b>Date Delivered:</b>   | 10 May 2002                   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The cases concern the attempts of seven applicants to regain possession of their apartments in the municipalities Mostar West (“Zapad”) and Mostar Southwest (“Jugozapad”). All the applicants have lodged applications with CRPC which has issued decisions confirming their occupancy rights. However, the competent authorities have failed to execute those decisions.

### Admissibility

As the applicants could not be required to exhaust any further domestic remedies, the Chamber declared the applications admissible.

### Merits

#### *Discrimination*

On the basis of Article II paragraph 2(b) of the Human Rights Agreement the Chamber considered if the applicants had suffered discrimination in the enjoyment of their rights. In the opinion of the Chamber the uncontested policy of the ruling Croat HDZ party to prevent minority returns and maintain the demographic “purity” of the three Croat majority municipalities in itself constituted a systematic pattern of discrimination against persons of Bosniak and Serb origin, including persons of mixed marriages. Accordingly, the Chamber concluded that the applicants had been discriminated against in the enjoyment of their rights under Articles 17 and 26 of the ICCPR and Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

#### *Article 8 of the Convention*

Recalling *Blentić v. The Republika Srpska* and *Đ.M. v. the Federation of Bosnia and Herzegovina*, the Chamber stated that Article 8 may give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees, and that a fair balance must be struck between the general public interest and the interests of the people concerned. The Chamber found that the passivity shown by the municipal authorities in response to the applicants’ various petitions to re-enter apartments which were indisputably theirs amounted to a lack of respect for their “home” within the meaning of Article 8 paragraph 1. In the opinion of the Chamber the respondent Party had made no attempt to justify this lack of respect. Nor could the Chamber find any such justification on its own motion. The Chamber therefore concluded that the applicants’ rights under Article 8 had also been violated.

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

The Chamber noted that positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction. The Chamber was concerned with the failure of the authorities to protect the applicants against a continuing unlawful occupation of their possessions within the meaning of the first sentence of the first paragraph of Article 1. The Chamber found, for essentially the same reasons as it had given in relation to Article 8 of the Convention, that this failure of the authorities to assist the applicants in recovering their property also amounted to a breach of their rights under Article 1 of Protocol No. 1 to the Convention.

*Article 13 of the Convention*

Recalling *Galić v. The Federation of Bosnia and Herzegovina*, the Chamber stated that 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 for an applicant that he has an arguable claim that such a violation has occurred. The Chamber further stated that the applicants clearly had arguable claims that their rights had been violated and that accordingly they were entitled to an effective remedy in respect of those claims. As the Chamber had already found that there had been no sufficient response to the applicants' various claims and petitions to the administrative authorities, it followed that in this respect there had also been a violation of Article 13 in isolation.

**Remedies**

The Chamber ordered the Federation to reinstate the applicants into possession of their apartments immediately and in any event at the latest by 10 June 2002. Further, the Chamber ordered the respondent Party to pay the applicants sums varying from KM 6,800 to KM 7,200, as compensation for non-pecuniary damages and the loss of use of their home. In addition, the Chamber ordered the Federation to pay to the applicants in each registered case KM 200 for each further month that they remain excluded from their apartments as from May 2002 until the end of the month in which they are reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate. The Chamber also ordered the payment of simple interest at the rate of 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. Finally, the Chamber ordered the Federation to take all necessary measures to ensure the respect for and the implementation of Article 18 f of the new Abandoned Apartments Law, which provides for the criminal responsibility of administrative officials who obstruct the return process.

*Decision adopted 10 May 2002*

*Decision delivered 11 April 2002*

**DECISION ON REQUEST FOR REVIEW**

The respondent Party submitted a request for review in which it argued that (a) the amount of compensation for non-pecuniary damages was not in accordance with the previous decisions of the Chamber; (b) the orders to compensate the applicants for loss of use of their homes were excessive; and (c) that the respondent Party was not responsible for the loss of the possession of their apartments and the damage caused to the applicants. The Chamber stated that the respondent Party had failed to give any grounds as to why the issues referred to in the request for review would raise "a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance". As the request for review failed to meet the first of the two requirements set forth in Rule 64 paragraph 2 of its Rules of Procedure, the Chamber decided to reject the request for review.

*Decision adopted 5 July 2002.*

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| <b>Case No.:</b>         | CH/00/6558                           |
| <b>Applicant:</b>        | Edin GARAPLIJA                       |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 April 2002                        |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicant alleged a violation of his right to a fair hearing in appellate proceedings before the Supreme Court of the Federation of Bosnia and Herzegovina. These proceedings were renewed pursuant to the Chamber's decision on admissibility and merits of 6 July 2000 in case no. CH/98/934. The applicant alleged that the Supreme Court refused to accept evidence presented by him in his defence during the renewed appellate proceedings and refused him to call witnesses. He also complained that the panel's composition was the same as in the previous appellate proceedings and alleged that one of the judges of the Supreme Court received instructions from the secret service to deviate from justice in his case. Amnesty International participated in the proceedings before the Chamber as *amicus curiae* and submitted a report on this case.

### **Admissibility**

The Chamber observed that this case was different from the one previously decided by the Chamber in that it concerned the renewed proceedings, not the original ones. This case thus was not substantially the same and not inadmissible for that reason. The Chamber found no evidence to support the applicant's claim that a judge collaborated with the secret service, so it declared the applicant's request to remove that judge inadmissible as manifestly ill-founded. The Chamber then observed that the case was not an abuse of the right to petition (as had been argued by the respondent Party) and thus declared the remainder of the application admissible.

### **Merits**

#### *Article 6 of the Convention*

The Chamber noted that the renewed appellate proceedings took place before the same Supreme Court panel as in the first set of the appellate proceedings. It found, however, that this did not constitute a violation of the applicant's right to a fair hearing before an impartial tribunal. Relying on the precedent of the ECHR, the Chamber held that there was no recognised right to a new appellate panel and that there was no evidence of lack of impartiality. Consequently, there had been no violation of Article 6 in this respect.

As to the applicant's complaint that he was not allowed to call witnesses, the Chamber noted that the Convention did not provide an accused person an unlimited right to obtain the attendance of witnesses in court. The domestic courts enjoy the discretionary power to satisfy themselves that the hearing of a witness is likely to assist them in ascertaining the truth. Article 6 paragraph 3 only requires that a court must give the reasons for which it decides not to summon those witnesses whose examination has been expressly requested. The Chamber, having examined the record of the hearing and the Supreme Court's second decision, observed that the Supreme Court indicated to a sufficient extent the grounds on which it based its decision not to hear new witnesses or to re-hear witnesses already examined by the Cantonal Court.

In conclusion, the Chamber found that the facts did not support the applicant's complaint of an unfair trial and accordingly found no violation of Article 6.

### **Dissenting Opinion**

In his dissent, Mr. Giovanni Grasso argued that the panel of the Supreme Court reviewing the applicant's renewed proceedings was neither "impartial", nor "established by law" within the meaning of Article 6 paragraph 1 of the Convention and therefore a violation of that Article.

Relying on jurisprudence of the European Court of Human Rights, the dissenter observed that the applicant's fear of the court's bias must be objectively justified to have legal significance. Since the renewed proceedings involved the same subject matter and all the same judges as the original appeal, Mr. Grasso concluded that the applicant's fear of bias was objectively justified and that his Article 6 paragraph 1 rights to a fair trial had been violated.

The dissenter also argued for a different reading of the domestic law. Because the review of the Supreme Court of the Federation of Bosnia and Herzegovina was occasioned by the Chamber's order, and not by the Supreme Court's own motion, the dissenter concluded that a different article of domestic law, Article 398 of the Law on Criminal Procedure, applied. Under that article, a new panel was mandatory, "if possible". Mr. Grasso thus concluded that reviewing of the applicant's case by the same panel of the Supreme Court was a violation of domestic law.

*Decision adopted 9 April 2002*

*Decision delivered 12 April 2002*

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| <b>Case No.:</b>         | CH/01/6979                           |
| <b>Applicants:</b>       | E.M. & S.T.                          |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 8 March 2002                         |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicant was brought before the Chamber by Ms. E.M. in her own right and on behalf of her brother, S.T. In July 1998, under the influence of alcohol, B.B. shot Š.T. in the head and killed him. On 21 October 1998, at the conclusion of the criminal trial for the killing of Š.T., the Municipal Court of Livno found that B.B. had committed the criminal offence of murder. However, because of reduced criminal accountability at the moment of the crime, due to consumption of alcohol, the court found that a sentence to imprisonment or other punishment was inappropriate. Instead, the Court issued a procedural decision ordering B.B. to undergo a security measure of mandatory psychiatric treatment in custody. After three months the order of psychiatric treatment in custody was changed to treatment at liberty. B.B. has been free ever since. The applicant initiated several unsuccessful legal proceedings requesting a reconsideration of the procedural decision of the first-instance court. The panel of judges, the public prosecutor, the defence council and the accused at the trial before the Municipal Court were all citizens of Bosnia and Herzegovina of Croat origin whereas the victim and his family were citizens of Bosnia and Herzegovina of Bosniak origin. The applicant E.M., Š.T.'s sister, alleged violations of her and the decedent's rights.

### **Admissibility**

The respondent Party argued that the application should be declared inadmissible under the six-months rule (Article VIII(2)(a) of the Agreement since more than two years had elapsed from the time of the decision of the Municipal Court until the filing the application. The Chamber found that the six months period began to run on 15 January 1999, the date on which the Cantonal Court refused the applicant's appeal, and was interrupted less than six months thereafter, on 17 June 1999, with the submission of the applicant's first letter to the Chamber, in which she summarized her complaints. A provisional file was opened at that time. The fact that the formal application form was filled out and submitted much later (on 13 March 2001) did not negate the applicant's compliance with six-months rule. Since no other grounds of inadmissibility were raised, the Chamber declared the application admissible.

### **Merits**

#### *Article 2 of the Convention*

The Chamber observed that Article 2 creates a positive obligation for 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. Taking into account the passive conduct of the prosecutor during B.B.'s trial, the Chamber noted that the criminal proceedings failed to adequately deter B.B. from the crime, since the perpetrator probably expected no sanction to follow. The Chamber concluded that this failure to deter was a breach of the state's obligation to protect life in violation of Article 2. The Chamber found this breach to be a violation of both the decedent's and the applicant's rights.

#### *Discrimination*

The Chamber found the respondent Party to have discriminated against the decedent in the enjoyment of his right to life, to equal treatment before the tribunals and to protection of the State against violence as protected by Article 5 (a) and (b) of the CERD. In addition, the respondent Party was found to have discriminated against the applicant in the enjoyment of her right as protected by Article 5 (a) of CERD, the respondent Party thereby being in violation of Article I of the Human Rights Agreement and E.M.'s rights under Article 2 of the Convention to a proper investigation and fair trial in regard to her brother's death.

*Article 13 of the Convention*

The Chamber had decided that the case primarily raised issues under Article 2 of the Convention. In light of the findings it had made in respect of that Article, and also in respect to the findings made in regard to discrimination, the Chamber did not consider it necessary to examine the applicant's claims under Article 13.

**Remedies**

The only remedy requested by the applicant was the retrial of B.B. In balancing the opposite interests of the applicant (the conduct of a fair trial) and B.B. (not to be tried again), the Chamber noted that a retrial of the decedent's murderer could have been ordered. It however declined to make such an order, *inter alia* taking into account the length of time that had elapsed between the applicant's initial letter to the Chamber of 17 June 1999 and the submission of the formal application on 13 March 2001.

*Decision adopted 8 February 2002*

*Decision delivered 8 March 2002*

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|--------------------------|-------------------------------|
| <b>Case No.:</b>         | CH/01/7248                    |
| <b>Applicant:</b>        | “ORDO” – RTV “Sveti Georgije” |
| <b>Respondent Party:</b> | Bosnia and Herzegovina        |
| <b>Date Delivered:</b>   | 5 July 2002                   |

## **DECISION ON ADMISSIBILITY AND MERITS**

### **Factual background**

The applicant is a private radio and television station in Banja Luka in the Republika Srpska named “ORDO” – RTV “Sveti Georgije” (“RTV Sveti Georgije”). It obtained a provisional broadcasting license on 30 August 1999 from the Independent Media Commission, which was later succeeded by the Communications Regulatory Agency (“CRA”), both institutions established by decisions of the High Representative to regulate communications and the media.

On 7 May 2001, violent protests occurred in the city centre of Banja Luka which prevented the groundbreaking ceremony for the laying of the cornerstone to reconstruct the former Ferhadija mosque destroyed in 1993. On 8 May 2001, RTV Sveti Georgije broadcast a live call-in television programme concerning the events of the previous day. During this programme, numerous inappropriate statements were made against both the Islamic and international communities by viewers who called in. Many callers were outraged that the groundbreaking ceremony for reconstruction of the Ferhadija mosque was planned on St. George’s Day, a major Orthodox religious holiday.

In response to the programme the CRA, in a decision of 17 May 2001, suspended the provisional broadcasting license of RTV Sveti Georgije. In that decision the CRA found that RTV Sveti Georgije violated applicable provisions of the Broadcasting Code of Practice and the Terms and Conditions of its license. The CRA concluded that, “the station has given a tendentious, partially incorrect and one-sided view of an important event in [Bosnia and Herzegovina]”. Moreover, “the programme, through the failure of responsible editorial and management control, did not only denigrate the religious beliefs of others, but it also caused a considerable risk of public harm”. Thereafter, when RTV Sveti Georgije violated the terms of its suspension, the CRA, in a decision of 27 July 2001, revoked RTV Sveti Georgije’s provisional broadcasting license. After pursuing an appeal process within the CRA, those decisions became final and binding. In its application before the Chamber, RTV Sveti Georgije challenged the legality and validity of these decisions of the CRA on both substantive and procedural grounds.

### **Admissibility**

Considering that the applicant had exhausted all available avenues for appeal before the CRA and considering that no Court of Bosnia and Herzegovina was functioning during the relevant time period and the deadline for filing such an appeal appears to have expired, the Chamber decided that the applicant had exhausted all effective remedies. The Chamber found that the CRA is an agency of Bosnia and Herzegovina and that Bosnia and Herzegovina is thereby responsible for its actions.

### **Merits**

#### *Article 10 of the Convention*

The Chamber took particular note of the prevailing circumstances in Bosnia and Herzegovina and its status as a country seeking to promote the peace implementation process. It further noted that the programme was broadcast only one day after the extensive violent protests in the city centre of Banja Luka. The Chamber found that the programme, taken as a whole, objectively could be seen as inciting violence and as promoting religious and ethnic intolerance. Therefore, the CRA acted within

its margin of appreciation when it determined that RTV Sveti Georgije had committed a breach of the applicable broadcasting code of practice, which warranted sanctions. The Chamber concluded that the CRA's suspension and later revocation of RTV Sveti Georgije's provisional broadcasting license was proportionate to the legitimate aims of protecting the rights of others, protecting public safety, and preventing disorder or crime. Thus, the Chamber determined that the interference with the applicant's freedom of expression was "prescribed by law", pursued a legitimate aim, and was "necessary in a democratic society", within the meaning of paragraph 2 of Article 10. Accordingly, the Chamber concluded that the respondent Party had not violated the applicant's rights guaranteed under Article 10.

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

For the reasons explained above with respect to Article 10, the Chamber concluded that the respondent Party had not violated the rights of the applicant protected by Article 1 of Protocol No. 1 because the CRA's suspension and later revocation of the applicant's provisional broadcasting license were "subject to the conditions provided by law" and "in the public interest". The CRA was acting to enforce laws "necessary to control the use of property" for the "general interest". In reaching this conclusion, it was not necessary for the Chamber to decide whether the applicant's provisional broadcasting license constituted a protected "possession" or "property", within the meaning of Article 1 of Protocol No. 1. Chamber expressly left this question open.

#### *Article 6 of the Convention*

The Chamber found that Bosnia and Herzegovina had violated the right of the applicant to a public hearing by an independent and impartial tribunal, as protected by paragraph 1 of Article 6. The Chamber concluded that the challenged proceedings before the CRA involving the suspension and revocation of the applicant's provisional broadcasting license had involved the determination of "civil rights and obligations"; therefore, Article 6 was applicable to those specific proceedings. The Chamber further concluded that the CRA was "established by law", but considered the CRA not an "independent and impartial tribunal", and it did not provide a "public hearing", within the meaning of paragraph 1 of Article 6. The Chamber highlighted, however, that if there had been a court (*i.e.*, the Court of Bosnia and Herzegovina) which had had proper procedural guarantees, had functioned during the relevant time period in Bosnia and Herzegovina, and could have decided upon an appeal filed against the challenged final administrative decisions of the CRA, then the Chamber would have been satisfied that the CRA, as an administrative body, had acted within the scope of its competence and its proceedings had been entirely proper and fair.

#### *Article 13 of the Convention*

Taking into consideration its conclusion that the respondent Party had violated the applicant's rights protected by Article 6 of the Convention, the Chamber decided that it was not necessary to examine the application under Article 13 of the Convention, as the requirements of Article 13 are less strict than, and in the context of this case were absorbed by, the requirements of paragraph 1 of Article 6.

#### **Dissenting/Concurring Opinions**

In his concurring opinion Mr. Andrew Grotrian added some further thoughts to the Chamber's reasoning that the challenged proceedings before the CRA involved the determination of the applicant's "civil rights and obligations" within the meaning of Article 6 paragraph 1 of the Convention, and that Article 6 was therefore applicable to those proceedings. Furthermore he pointed out that it does not necessarily follow from the Chamber's decision that Article 6 would apply to other functions of the CRA, such as the allocation of licences.

Mme. Michèle Picard attached a concurring opinion, joined by Mr. Andrew Grotrian, in which she states that she found the reasoning of the majority not very clear. In her opinion, it is the whole system that lacks the appearance of independence and impartiality. She argued that the confusion of powers in the same organ was sufficient to give the whole institution an appearance of partiality.

Mr. Manfred Nowak argued in his partly dissenting opinion, joined by Mr. Dietrich Rauschnig, that the provisional license did not grant any civil right. Consequently, Article 6 was not applicable in the proceedings regarding the granting or the revocation of both provisional and long-term broadcasting licenses. He also explained why he disagreed with the reasoning of the majority that the CRA did not qualify as an independent and impartial tribunal as required by Article 6 (if this provision was deemed to be applicable).

Mr. Miodrag Pajić attached a dissenting opinion, in which he concluded that there was a violation of Article 10 of the Convention. He did not find the revocation of the provisional license by the CRA proportionate to the pursuit of the legitimate aim of protecting the rights of others nor to the purpose of protecting the public safety. In addition he found that the provisional license constituted a “possession” protected by Article 1 of Protocol No. 1 to the Convention and found a violation of this article. Lastly, he could not agree that the sole finding of a violation of human rights guaranteed by Article 6 of the Convention was sufficient satisfaction.

Mr. Vitomir Popović reasoned in his dissenting opinion that the Chamber should have issued a decision finding a violation of Article 10 of the Convention, and, moreover, should have earlier issued an order for provisional measures to render out of force the CRA's suspension and later revocation of the applicant's provisional broadcasting license. With respect to the ordered remedy he concluded that the finding of a violation of paragraph 1 of Article 6 of the Convention was manifestly disproportionate to the established violation.

*Decision adopted 3 June 2002*

*Decision delivered 5 July 2002*

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|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/01/7351                           |
| <b>Applicant:</b>        | Ana KRALJEVIĆ                        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 12 April 2002                        |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina of Croat origin. Before the armed conflict in Bosnia and Herzegovina she was an ambulance driver at the Medical Center in Ilidža. During the war she was unable to reach her workplace. After the war the applicant unsuccessfully requested to resume her work.

In June 1996 the Medical Center issued a decision terminating the applicant's employment as of 2 May 1992 for not reporting to work for more than twenty days without providing a reason. The decision was posted on a bulletin board within the Medical Center's premises.

In 1996 after the reintegration of Ilidža into the territory of the Federation the Medical Center employed two new drivers. They had not worked at the Medical Center before and were of Bosniak origin.

In January 2000, after the Law on Labour entered into force, the applicant filed a request to the Medical Center seeking reinstatement into her employment position. In February 2000 the Medical Center requested her to present her personal dossier which could be found at the Ilidža Municipality. In the dossier, which the applicant received from the Ilidža Municipality, she discovered, for the first time, the decision terminating her employment, dated 13 June 1996.

In March 2000 the applicant filed an objection against the decision of 13 June 1996 to the Medical Center. On 1 June 2000 the Medical Center sent a notification to the applicant that in accordance with the instructions on Article 143 paragraph 2 of the Law on Labour her request of January 2000 was considered ill-founded and accordingly rejected.

### Admissibility

The Chamber observed that although the applicant was prevented from resuming work before 14 December 1995 (the date of entry into force of the Dayton Peace Agreement), the decision on employment termination was issued in 1996, so the Chamber had competence *ratione temporis* to hear the case. The Chamber also noted that the applicant could not regain employment through the relevant domestic courts, and concluded that no remedy was available to the applicant for the purpose of obtaining reemployment. The Chamber, however, observed that the applicant did have access to domestic courts and so it found the applicant's claims under Article 6 of the Convention inadmissible as manifestly ill-founded.

### Merits

Examining the evidence, the Chamber first determined that the applicant was treated differently from others in the same or relevantly similar situations. The Chamber then concluded that the Medical Center's decision to hire two new drivers instead of the applicant had discriminatory motives and was influenced by her Croat descent. The Chamber observed that during the armed conflict the applicant was absent from work for good cause, and did not have to provide a timely explanation for her absence. In addition, the decision concerning her termination was not delivered to the applicant as provided by domestic law, so it did not become effective until later, when the applicant found it in her personal file. The Chamber thus concluded that the respondent Party failed to meet its burden of

demonstrating that its actions were reasonably and objectively justified. The Chamber found that the applicant has been discriminated against in the enjoyment of her right to work and to just and favourable conditions of work as defined in Articles 6 paragraph 1 and 7(a)(i) and (ii) of the ICESCR and Article 5(e)(i) of CERD.

### **Remedies**

The Chamber ordered the Federation to ensure that the applicant was no longer discriminated against in her right to work and to just and favourable conditions of work, and that she was offered an opportunity to resume her work on terms appropriate to her former position and equal to those enjoyed by other employees.

Addressing the applicant's request for compensation, the Chamber took into account the applicant's unsuccessful attempts to resume work and the Medical Center's inappropriate responses to her efforts from the date the Chamber obtained *ratione temporis* jurisdiction, 14 December 1995, until the delivery of this decision on 12 April 2002. For these reasons the Chamber awarded the applicant, on an equitable basis, a total of KM 15,000 by way of compensation for pecuniary and non-pecuniary damages.

*Decision adopted 5 March 2002*

*Decision delivered 12 April 2002*

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| <b>Case No.:</b>         | CH/01/7488                           |
| <b>Applicant:</b>        | Vlako BUZUK                          |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 5 July 2002                          |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicant is a citizen of Bosnia and Herzegovina of Croat origin. During the armed conflict he was a member of the Croatian Defence Council for Kreševo. On 1 September 2000 he was arrested for offences of genocide and war crimes against the civilian population. The indictment against him alleged that during 1993 he had participated in the ethnic cleansing, frightening, persecution, maltreatment, robbery of property, forced labour of citizens, hostage taking and illegal imprisonment of Bosniaks. He was held on remand until 17 January 2002 whereupon he was acquitted of all charges and released.

### Admissibility

The Chamber declared the application inadmissible as manifestly ill-founded in relation to the complaints under Articles 7 and 17 of the Convention, Article 2 of Protocol No. 7 to the Convention and in relation to alleged discrimination.

Regarding Article 7 the Convention (*nullum crimen sine lege, nulla poena sine lege*) the Chamber noted that the acts on account of which the applicant was tried constituted criminal offences under national law and furthermore, the applicant was acquitted of all charges.

With regard to Article 17 of the Convention (misuse of power) the Chamber found that the applicant failed to substantiate the allegations of misuse of power.

Regarding the right to appeal in criminal matters under Article 2 of Protocol No. 7 to the Convention, the Chamber noted that the applicant was acquitted of all charges.

Regarding the discrimination complaint the Chamber found that the facts of this case did not indicate that the applicant has been the victim of discrimination on any of the grounds set forth in Article II paragraph 2(b) of the Agreement.

As to the complaint that there had been violations of the applicant's rights under the Universal Declaration of Human Rights, the Chamber concluded that it was not competent to consider allegations of violations of provisions of the Universal Declaration of Human Rights. It followed that this part of the application was incompatible *ratione materiae* with the provisions of the Human Rights Agreement.

The Chamber found that no other ground for declaring the case inadmissible had been established. Accordingly, the Chamber declared the part of the application concerning alleged violations of Articles 5, 6, 9 and 13 of the Convention admissible.

### Merits

#### *Article 5 of the Convention*

The Chamber found that the applicant's detention was lawful as complying with the six-month rule under domestic law (concerning length of pretrial detention prior to indictment) and found it lawful as complying with the Rules of the Road since the respondent Party was acting under the authority of

the ICTY Prosecutor. Therefore, the Chamber concluded that there has been no violation of Article 5 paragraph 1.

Regarding the alleged violation of Article 5 paragraph 2, the Chamber found that the applicant was furnished with the relevant information to challenge the lawfulness of his detention. Therefore, the Chamber found that for the period from the applicant's arrest until charge, there had been no violation.

The Chamber further found that the investigative judge was not a "judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5 paragraph 3 and that the length of the applicant's detention from 1 September 2000 until his release on 17 January 2002 exceeded the limits of reasonableness. Consequently, the Chamber concluded that the respondent Party violated the applicant's rights as guaranteed by Article 5, paragraph 3.

#### *Article 6 of the Convention*

With regard to Article 6, paragraph 1 the Chamber found that there had been no violation of the reasonable time requirement. However, the Chamber found that the investigating judge's disregard for the provisions of the Code of Criminal Procedure and his refusal of the applicant's request to be given the opportunity to prove his innocence at the pre-trial stage violated the principle of equality of arms under Article 6, paragraph 1. This violation as to the fairness at the pre-trial stage had not been sufficiently remedied by the applicant's acquittal.

With regard to Article 6, paragraph 3(a) the Chamber found that the applicant has failed to show any grounds for a violation. The Chamber found that the indictment of 16 May 2001 was sufficiently clear and detailed in nature to permit the applicant to prepare a defence to the charges that he was subsequently acquitted of.

#### *Articles 9 of the Convention*

The applicant complained that his right to freedom of religion had been violated by a refusal to allow him access to a Catholic priest of his own choosing during the Easter Holidays in the year 2001. The Chamber found that the obligation on the respondent Party was to provide the applicant with a Catholic priest and not to impose restrictions contrary to Article 9, paragraph 2. It concluded that there is no right under the Convention to be given access to a priest of one's own choosing. The Chamber therefore found that the interference with the applicant's rights was proportionate to the aims pursued and therefore not a violation of the applicant's right of freedom to manifest his religion under Article 9.

#### **Article 13 of the Convention**

Due to the finding of violations under Articles 5 and 6 of the Convention, the Chamber considered it unnecessary to separately examine the complaint under Article 13.

#### **Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to pay to the applicant the sum of KM 5,000 by way of compensation for non-pecuniary damages and the sum of KM 1,800 by way of compensation for legal costs.

*Decision adopted 3 July 2002*

*Decision delivered 5 July 2002*

|                          |                                      |
|--------------------------|--------------------------------------|
| <b>Case No.:</b>         | CH/01/7952                           |
| <b>Applicants:</b>       | Suada SELIMović <i>et al.</i>        |
| <b>Respondent Party:</b> | Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>   | 11 January 2002                      |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicants are eight former judges of the Supreme Court of the Federation of Bosnia and Herzegovina whose five-year term of office had expired in 2001. They were born between 1933 and 1937 and thus eligible for reappointment, as Federation judges may continue to serve up to the mandatory retirement age of 70. The case concerns the decision by the House of Peoples of the Federation of Bosnia and Herzegovina not to approve the nomination by the President of the Federation for their re-appointment as judges to the Supreme Court. The applicants alleged that age was the decisive factor in the rejection of their re-appointment. They claim that the decision by the Federation House of Peoples constitutes discrimination on the ground of age in the enjoyment of their right to equal access to public service in violation of Article 25(c) of the ICCPR in conjunction with Article II(2)(b) of the Agreement.

### Admissibility

The respondent Party did not object to the admissibility of the application and, in fact, indicated that it was inclined to believe that the applicants had been discriminated against. Finding that no effective remedies were available to the applicants and thus that the question of non-exhaustion did not arise, the Chamber declared the application admissible.

### Merits

#### *Article 25(c) of the ICCPR*

Applying a three-step analysis to the discrimination claim, the Chamber first found that age was a prohibited discrimination basis covered under “other status” in Article 2 paragraph 1 of the ICCPR.

Second, the Chamber found that the applicants were, in fact, subjected to differential treatment based on their age. For this purpose, the Chamber looked at the transcript of the session of the House of Peoples, in which the applicants’ appointment was voted on. It found that the speakers of both the Bosniac and the Croat Clubs in the House of Peoples had stated that judges aged 65 or more should not be re-appointed. These statements, coupled with the fact that all but one applicant were aged 65 or above, while none of the confirmed judges had reached age 65, led the Chamber to conclude that their age was the reason for the refusal to re-appoint the applicants.

Third, the Chamber examined whether differential treatment had any reasonable and objective justification, whether it pursued a legitimate aim and whether the means employed and aims sought were proportionally related. The Chamber noted that in the debate in the House of Peoples it had been stated that the courts of the Federation of Bosnia and Herzegovina were not working in a satisfactory way, and that renewing the composition of the Supreme Court could improve their performance. The Chamber found that this was a reasonable aim for the House of Peoples to pursue. However, the insistence on the “age structure”, instead of an approach based on the assessment of merits, the Chamber observed, highlighted the unreasonableness of the criteria chosen. The Chamber found that the House of Peoples had failed to accomplish a reasonable relationship of proportionality between the aim pursued and the means adopted and concluded that

the applicants had been discriminated against in the enjoyment of their right to have access on general terms of equality, to public service in their country.

### **Remedies**

The Chamber ordered the Federation of Bosnia and Herzegovina to include the applicants in the current round of selection to fill vacancies on the Supreme Court, without requiring them to reapply or to be interviewed again. The Chamber rejected the applicants' claim for monetary compensation on the ground that its finding of discrimination constituted sufficient compensation for the moral damage suffered by the applicants.

### **Dissenting Opinions**

Mr. Rona Aybay, joined by Mme. Michèle Picard and Messrs. Dietrich Rauschning and Viktor Masenko-Mavi, dissented in part, writing that the Chamber should not have found a violation of Article 25(c) of the ICCPR. Mr. Aybay argued that the question of whether some of the nominated judges who were over a certain age should or should not be approved and appointed by the House of Peoples was beyond the judicial review of any court unless serious procedural defects existed in the voting process. In reaching this conclusion, Mr. Aybay noted that a significant number of members of the House of Peoples did not take part in the decision, that the individual motives of all those who voted against the applicants could not be ascertained, and that the decisions of members of a parliamentary body should not be scrutinized or subjected to external pressures.

In a separate dissent, Mr. Victor Masenko-Mavi, joined by Mr. Dietrich Rauschning argued that Article 25(c) creates no entitlement to occupy a particular office. He pointed out that the applicants were not deprived of access to the public office, but instead were allowed to participate in the selection process up until its last stage. During this last stage, Mr. Masenko-Mavi argued, the House of Peoples used its legislative discretion properly to appoint other candidates of more suitable qualifications and age.

Mr. Mehmed Deković also dissented from the Chamber's conclusion that its finding of discrimination was sufficient to address the moral harm resulting from the violation. Mr. Deković instead concluded that monetary compensation was appropriate.

In a fourth dissenting opinion Mr. Andrew Grotrian, joined by Mr. Jakob Möller, expressed the view that the House of Peoples was entitled to take the view that the imposition of an age threshold was an appropriate means of bringing new blood into the Supreme Court. Arguably, such an approach was preferable to the alternative suggested by the majority, namely an assessment of the judicial performance of the individual candidates. Mr. Grotrian did not consider a parliamentary body, such as the House of Peoples, well equipped to conduct such an assessment, which might carry the risk of unacceptable political interference with the judiciary. He was not satisfied, therefore, that the House of Peoples went beyond its margin of appreciation and would have found no violation of the Agreement.

*Decision adopted 8 January 2002*

*Decision delivered 11 January 2002*

|                          |                  |
|--------------------------|------------------|
| <b>Case No.:</b>         | CH/01/8054       |
| <b>Applicant:</b>        | Nataša PILIPOVIĆ |
| <b>Respondent Party:</b> | Republika Srpska |
| <b>Date Delivered:</b>   | 6 December 2002  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The case concerns the applicant's attempts to achieve a transfer of the occupancy right of her late great-grandmother to herself. Her right to achieve such a transfer is based upon a verified contract on life support. Since October 1992, the applicant has pursued proceedings before different domestic bodies, both judicial and administrative, in order to achieve the transfer of the occupancy right, but as of the date of adoption of the Chamber's decision (5 November 2002), her right remains uncertain due to contradictory results from the domestic courts and the administrative bodies.

### Admissibility

The Chamber found that the applicant's complaint regarding the damage to or loss of moveable property from the apartment did not concern an interference with her rights under the Agreement by the authorities of any of the signatories to the Agreement. Accordingly, the Chamber declared this part of the application inadmissible as incompatible *ratione personae* with the provisions of the Agreement.

The respondent Party argued that the application should be declared inadmissible because the applicant had abused her right of petition. On examination of this complaint, the Chamber considered that the application was not clearly based on untrue statements of facts, alleged to be devoid of any sound judicial basis or lodged solely for propaganda reasons. This led to the conclusion that there is no question of an abuse of the right of petition.

Recalling that the existence of domestic remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness, the Chamber found, on the information before it, that no effective remedy was available to the applicant which could have afforded redress in respect of the breaches alleged and that she was not required to pursue any further remedy provided by domestic law.

### Merits

#### *Article 6 of the Convention*

The applicant complains about the length of her proceedings and the clear pattern of obstruction before the competent housing-communal organs in Banja Luka, the Ministry for Urbanism of the Republika Srpska, and the competent courts in the Republika Srpska.

In assessing the length of proceedings, the Chamber found that, considering its competence *ratione temporis*, it could 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. At the date of adoption of the Chamber's decision, the proceedings pending before the domestic courts, had already last 6 years and 11 months after 14 December 1995.

Recalling *Mitrović*, the Chamber held that 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 other circumstances of the case. In this respect, the Chamber held that the factual and legal questions raised by the case did not appear overly complex as to require over six years of proceedings. Moreover, the Republika Srpska had not justified the excessive procedural delays. The Chamber further held that the applicant had not contributed in any way to the length of proceedings.

Further, given that the question concerned the right to obtain a transfer of an occupancy right and that the applicant found herself in an uncertain position because of the contradictory decisions of the court and the administrative organs, the Chamber noted that a speedy outcome of the administrative dispute before the Supreme Court would have been of particular importance to the applicant. As regards the complaint concerning the alleged pattern of obstruction of the administrative and judicial system in the Republika Srpska, the Chamber found, considering that it had already found a violation of the length of proceedings, that it was not necessary to examine the applicant's complaints in this regard.

*Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention*

In light of the fact that it found a violation of the applicant's right projected by Article 6 paragraph 1 of the Convention with regard to the length of proceedings, the Chamber did not consider it necessary to separately examine the application under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

**Remedies**

The Chamber ordered the respondent Party to take all necessary steps to promptly conclude the pending administrative proceedings, in any case within two months of the date on which this decision becomes final and binding, taking into account the decision of the First Instance Court in Banja Luka that the contract on life support was valid.

The Chamber further ordered the respondent Party to pay to the applicant the sum of 3000 Convertible Marks for non-pecuniary damages in recognition of her suffering as a result of her inability to have her case decided within a reasonable time.

*Decision adopted 5 November 2002*

*Decision delivered 6 December 2002*

|                          |  |
|--------------------------|--|
| <b>Cases Nos.:</b>       | CH/01/8590 and CH/02/8670  |
| <b>Applicants:</b>       | Televizija “MIB” Brčko and Muzička radio stanica “Studio 76” Brčko |
| <b>Respondent Party:</b> | Bosnia and Herzegovina   |
| <b>Date Delivered:</b>   | 6 December 2002  |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The cases concern the attempts of the applicants, one a television station and the other a radio station, to acquire a long-term broadcasting licence from the Communications Regulatory Agency through a competitive process designed to select a limited number of most highly qualified licence recipients. Both applicants failed to meet even the minimum criteria to qualify for a long-term broadcasting licence, and as a result, the Communications Regulatory Agency (“CRA”) denied their licence applications.

These applications raise issues regarding the right to access to courts as protected under Article 6 of the Convention

### Admissibility

The applications alleged a violation of the right to work of the applicants’ founder and owner. The Chamber recalled that the Convention does not contain a right to that effect. Therefore, in accordance with Article II(2)(b) of the Agreement, the Chamber only has jurisdiction to consider the right to work, which is protected by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, in connection with alleged or apparent discrimination in the enjoyment of such right. The facts of these cases do not indicate that the owner of the applicant stations has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. Accordingly, the Chamber declared this part of the applications incompatible *ratione materiae* with the provisions of the Agreement. The applications were however declared admissible in respect to Article 6(1) of the Convention.

### Merits

#### *Article 6 of the Convention*

The Chamber recalled that in the *RTV Sveti Georgije* case it had held that that proceedings before the CRA concerning the withdrawal of a provisional broadcasting licence involved the determination of the applicant’s “civil rights and obligations”, within the meaning of paragraph 1 of Article 6 of the Convention. The Chamber then went on to examine whether proceedings before the CRA satisfied the procedural safeguards contained in Article 6 of the Convention. The Chamber held that the CRA had been acting under the authority of the Decision of the High Representative of 2 March 2001, which has the force of law in Bosnia and Herzegovina. It follows that the CRA had been properly “established by law”. However, the Chamber found on the evidence before it that the CRA lacked the necessary “independence and impartiality” within the meaning of paragraph 1 of Article 6 of the Convention. In reaching this conclusion, the Chamber noted that the Enforcement Panel of the CRA suspended the provisional broadcasting licence of a broadcaster for having breached applicable provisions of the Broadcasting Code of Practice and the Terms and Conditions of its license. Its provisional licence was later revoked for non-compliance with the first decision. Thereafter, the broadcaster appealed these decisions before the CRA Council. In its decision, the Chamber found that in the provisional broadcasting licence proceedings, the CRA, as a singular administrative body, did not meet the requirements of the principles of an “independent and impartial tribunal” and did not provide a “public hearing” within the meaning of paragraph 1 of Article 6 of the Convention. The Chamber further remarked that the long-term broadcasting licence proceedings involved similar

bodies as those in the provisional broadcasting licence proceedings. Indeed, the CEO of the CRA and the CRA Council, on appeal, are similar authorities as the Enforcement Panel and the CRA Council. Moreover, all of these bodies are part of the CRA as a whole. Having in mind these conclusions, and regarding the first instance body of the long-term licence proceedings, the Chamber observed that the CEO was not only in charge of the competent authority to decide on the long-term proceedings, but he is also responsible for the day-to-day operations of the CRA. The CEO was in charge of “the implementation of relevant law and policy, technical oversight, industry affairs, administration and staffing”. Therefore, since the CEO is intervening in policy-making, implementing it, and deciding as a first instance body, this function cannot be seen as an independent body in the long-term licence proceedings. As to the second instance body, the Chamber recalled that it considered the CRA Council, as an appeal body, did not respect all the principles set out by Article 6 (1) of the Convention.

### **Remedies**

The Chamber ordered the respondent Party, within 6 months from the date on which the decision became final and binding, to take all necessary steps to provide the applicants with an opportunity, upon their written request, to file an appeal against any disputed final administrative decisions of the CRA to an independent and impartial tribunal.

### **Dissenting Opinions**

Mr. Manfred Nowak, joined by Mr. Jakob Möller, dissented in part, writing that as he had already stated in his partly dissenting opinion in the *RTV Sveti Georgije* case, he considered that the revocation of a provisional broadcasting license as a classical public law function and, therefore, not as an act which determines civil rights and obligations in the sense of Article 6 of the Convention. Even less can the granting of a long-term license be considered as determining a civil right and, therefore, requiring full access to an independent and impartial tribunal. As the frequency spectrum is a limited natural resource, only a limited number of broadcasters will be granted a long-term license. Nothing in the practice of the CRA suggests that the granting of long-term broadcasting licenses was not carried out in a fully professional and impartial manner. Mr. Nowak went on to declare that, it is, of course, highly desirable that the State Court of Bosnia and Herzegovina shall be in full operation without further delay and shall also have the power to review decisions of administrative authorities at the level of the State of Bosnia and Herzegovina. But not every administrative decision determines civil rights and obligations and, therefore, requires a full review by an independent and impartial tribunal as provided for in Article 6. Consequently, he disagreed that in this case Article 6 was applicable and has been violated.

*Decision adopted 5 November 2002*

*Decision delivered 6 December 2002*

|                            |   |
|----------------------------|---|
| <b>Cases Nos.:</b>         | CH/02/8679, CH/02/8689, CH/02/8690 and CH/02/8691                   |
| <b>Applicants:</b>         | Hadž BOUDELLAA, Boumediene LAKHDAR, Mohamed NECHLE and Saber LAHMAR |
| <b>Respondent Parties:</b> | Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina |
| <b>Date Delivered:</b>     | 11 October 2002   |

## DECISION ON ADMISSIBILITY AND MERITS

### Factual background

The applicants Boudellaa, Lakhdar, and Nechle obtained citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina on 2 January 1995, 20 December 1997, and 25 August 1995, respectively. The applicant Lahmar was granted a permit for permanent residence in Bosnia and Herzegovina on 4 April 1997. In October 2001 the applicants were arrested and taken into custody on the suspicion of having planned a terrorist attack on the Embassies of the United States and the United Kingdom in Sarajevo. In November 2001 the Federal Ministry of Interior issued decisions revoking the citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina of the applicants Boudellaa, Lakhdar and Nechle. They initiated an administrative dispute before the Supreme Court of the Federation against these decisions. The proceedings were still pending at the time of adoption of the Chamber's decisions. Also in November 2001 the Ministry of Human Rights and Refugees issued a decision terminating the permit for permanent residence of the applicant Lahmar in Bosnia and Herzegovina and banishing him from the country for a period of ten years. The applicant Lahmar appealed against this decision. The appeal was still pending at the time of adoption of the Chamber's decision. On 17 January 2002 the applicants were ordered to be released from pre-trial detention. However, instead of being released, they were immediately taken into the custody of the Federation Police, and the following day they were handed over to the military forces of the United States of America based in Bosnia and Herzegovina as part of the NATO led Stabilization Forces ("SFOR"). At that time, the applicants Boudellaa, Lakhdar and Nechle received decisions on "refusal of entry" ordering them to leave the territory of Bosnia and Herzegovina immediately. Within hours, they were transferred to the U.S. military detention facility at Guantanamo Bay, Cuba.

The expulsion of the applicants raised issues under Article 1 of Protocol No. 7 to the European Convention on Human Rights, which provides for procedural safeguards in relation to the expulsion of aliens. In case that the applicants were still to be considered citizens of Bosnia and Herzegovina the cases raise issues under Article 3 of Protocol No. 4 to the Convention which prohibits the expulsion of nationals. The cases also raised issues under Article 5 and 8 of the Convention.

The delivery of the applicants to U.S. authorities and their subsequent detention in Guantanamo Bay, Cuba, might give rise to a violation of Article 3, the prohibition of torture or inhuman or degrading treatment, to a violation of Article 1 of Protocol No. 6 to the Convention which contains the abolition of the death penalty, and to a violation of Article 6 of the Convention as the applicants claimed that any trial that they may face by U.S. authorities might not be a fair trial.

### Admissibility

Bosnia and Herzegovina raised the objection that it could not be considered a respondent Party as the applications were directed solely against the Federation and that it could not be held responsible for possible violations in the present cases. The Chamber held that in accordance with its previous jurisprudence, recalling *Zahirović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, it was not precluded from examining the potential responsibility of Bosnia and Herzegovina for the events complained of, as it is not restricted by the applicants' choice of respondent Party.

As regards exhaustion of domestic remedies, the Chamber held that the applicants had complied with their requirement to make normal use of effective domestic remedies. However, as regards the applicants' complaints concerning the right to have one's status as a citizen determined within a reasonable time, the Chamber declared this complaint inadmissible *ratione materiae* as it is not a right which is included among the rights and freedoms guaranteed under the Agreement.

The Chamber declared the remainder of the applications admissible.

## **Merits**

### *Article 1 of Protocol No. 7 to the Convention*

The Chamber found with respect to the expulsion of all four applicants that both respondent Parties failed to act in accordance with the domestic laws of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina governing the expulsion of aliens. Although the Chamber did not decide whether the applicants were still citizens at the time of their expulsion, it found that by not acting in accordance with the law both respondent Parties violated Article 1 of Protocol No. 7 to the Convention which provides for procedural safeguards in relation to the expulsion of aliens.

### *Article 5 paragraph 1 of the Convention*

The Chamber found that both respondent Parties violated the rights of the applicants protected by Article 5 paragraph 1 of the Convention with regard to the period from the entry into force of the decision of the Supreme Court of the Federation of Bosnia and Herzegovina to release the applicants on 17 January 2002 until the hand-over of the applicants to U.S. forces.

### *Article 6 paragraph 2 of the Convention.*

The Chamber also found that the decisions withdrawing the citizenship, violated the right of the applicants Boudellaa, Lakhdar and Nechle to be presumed innocent until proven guilty according to law as guaranteed by Article 6 paragraph 2 of the Convention.

### *Article 1 of Protocol No. 6 to the Convention*

The Chamber further examined the obligations of the respondent Parties in handing over the applicants to U.S. forces, which lead to their present detention at Camp X-Ray in Guantanamo Bay, Cuba. Taking into consideration the possibility that U.S. authorities might seek and potentially impose the death penalty against the applicants, the Chamber found that the respondent Parties should have sought assurances from the United States prior to handing over the applicants to U.S. forces that the death penalty would not be imposed upon them; failing to do so constituted a violation of Article 1 of Protocol No. 6 to the Convention.

### *Articles 3, 6 and 8 of the Convention*

The Chamber concluded that the respondent Parties did not violate their obligation under Article 3 of the Convention to protect the applicants from torture or inhuman or degrading treatment or punishment by handing them over to U.S. forces and further concluded that it was not necessary to separately examine their complaints under Articles 6 and 8 of the Convention.

## **Remedies**

The Chamber ordered Bosnia and Herzegovina to take all necessary steps to annul the decisions on refusal of entry issued in respect of three of the applicants on 10 January 2002, to take all necessary steps to decide, as a matter of urgency, on the appeal of the applicant Lahmar against his expulsion order, to take all necessary steps to ensure that the administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina concerning the decisions revoking the citizenship of the applicants Boudellaa, Nechle, and Lakhdar is decided, to use diplomatic channels

in order to protect the basic rights of the applicants and to take all possible steps to establish contacts with the applicants and to provide them with consular support. Bosnia and Herzegovina was further ordered to take all possible steps to prevent the death penalty from being pronounced against and executed on the applicants, including seeking assurances from the United States via diplomatic contacts that the applicants will not be subjected to the death penalty. Both respondent Parties were ordered to retain lawyers authorised and admitted to practice in the relevant jurisdictions and before the relevant courts, tribunals or other authoritative bodies in order to take all necessary action to protect the applicants' rights while in U.S. custody and in case of possible military, criminal or other proceedings involving the applicants, each of the respondent Parties bearing half the cost of the attorney fees and expenses.

The Chamber further ordered the respondent Parties to compensate each applicant in the amount of 10,000 KM for their suffering arising from the violations found. The respondent Parties were ordered pay this compensation to the applicants' families in Bosnia and Herzegovina if they do not return within a year. Both respondent Parties were also ordered to report to the Chamber no later than 11 November 2002, and thereafter periodically every two months until full implementation of the Chamber's decision is achieved, on all steps taken by the respondent Parties to implement the decision

### **Dissenting Opinions**

Mme. Michele Picard attached a partly dissenting opinion in which she disagreed that it was not necessary to examine the applications separately under Article 6 of the Convention. The European Court of Human Rights did not exclude that a decision on extradition could exceptionally raise a problem under Article 6, where there is a risk that the applicant would suffer "a flagrant denial of justice" in the receiving State. While there are considerable doubts whether the applicants will face the death penalty, there seems to be no doubt that the risk of suffering a flagrant denial of justice exists. Considering the rules of criminal proceedings in force in the American legal system, that is an "accusatory" system, which relies to a great extent on the equality of arms between the defence and the prosecution, the absence of these guarantees might lead to a totally unfair trial.

Mr. Dietrich Rauschnig attached a partly dissenting opinion in which he disagreed with the finding that the applicants were in real risk of facing the death penalty and therefore there was no obligation to seek assurances that the death penalty would not be imposed or carried out. Additionally, Mr. Rauschnig also disagreed with the finding that the applicants were handed over into illegal detention by U.S. forces as insufficient consideration had been given to the armed conflict with international terrorism and claims that the U.S. is entitled to detain members of the enemy's forces according to international law. Finally, Mr. Rauschnig disagreed with the finding of a violation of the presumption of innocence on the basis that the presumption of innocence does not forbid that decisions in administrative matters may be based on other evidence, such as a decision of the prosecutor to open a criminal investigation. The presumption of innocence, which aims to protect the fairness of criminal proceedings, cannot be interpreted so widely as to forbid that.

Mr. Viktor Masenko-Mavi, joined by Mr. Giovanni Grasso, attached a partly dissenting opinion arguing that there was a serious reason to believe that the applicants' rights secured by Articles 3 and 6 of the Convention might be violated. The legal uncertainty created by the U.S. President's Military Order of 13 November 2001 should have prompted the authorities of Bosnia and Herzegovina and the Federation to carefully consider the issues covered by Articles 3 and 6 of the Convention. The rights secured by Articles 3 and 6 of the Convention are of extreme importance, and in cases where there is a real risk of their flagrant violation, the extraditing or expelling State is bound either to take measures aimed at securing the guarantees enshrined in them or to refuse the extradition or expulsion.

Mr. Mato Tadić, joined by Mr. Miodrag Pajić, argued in a dissenting opinion, firstly, that the applications were inadmissible for failure to exhaust domestic remedies. The applicants failed to request postponement of enforcement of the procedural decisions of 16 and 20 November 2001, thus allowing the domestic authorities to continue the proceedings. The defence statement that a

positive outcome could not be expected is unacceptable. Secondly, The respondent Parties have accepted the United Nations Security Council Resolution 1373 and joined the fight against all forms of terrorism, aiming to prevent the actions of potential perpetrators or conspirators; thereby, they obliged themselves to take appropriate steps. Certainly, that fight against terrorism does not imply human rights violations. At the same time, however, Bosnia and Herzegovina, being an infant State in transition and under a special kind of protectorate, should not be expected to meet such highly demanding standards which would hardly even be complied with by some countries with highly established legal systems and the rule of law.

*Decision adopted 3 September 2002*

*Decision delivered 11 October 2002*

## ANNEX 6 TO THE GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BIH

### AGREEMENT ON HUMAN RIGHTS

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska (the "Parties") have agreed as follows:

#### CHAPTER ONE: RESPECT FOR HUMAN RIGHTS

##### *Article I Fundamental Rights and Freedoms*

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 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex. These include:

- (1) The right to life.
- (2) The right not to be subject to torture or to inhuman or degrading treatment or punishment.
- (3) The right not to be held in slavery or servitude or to perform forced or compulsory labor.
- (4) The rights to liberty and security of person.
- (5) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- (6) The right to private and family life, home, and correspondence.
- (7) Freedom of thought, conscience and religion.
- (8) Freedom of expression.
- (9) Freedom of peaceful assembly and freedom of association with others.
- (10) The right to marry and to found a family.
- (11) The right to property.
- (12) The right to education.
- (13) The right to liberty of movement and residence.
- (14) The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in the Annex to this Constitution secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### CHAPTER TWO: THE COMMISSION ON HUMAN RIGHTS Part A: GENERAL

##### *Article II Establishment of the Commission*

1. To assist in honouring their obligations under this Agreement, the Parties hereby establish a Commission on Human Rights (the "Commission"). The Commission shall consist of two parts: the Office of the Ombudsman and the Human Rights Chamber.
2. The Office of the Ombudsman and the Human Rights Chamber shall consider, as subsequently described:
  - (a) alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, or
  - (b) alleged or apparent discrimination on any ground such as sex, race, color, 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 Annex, where such 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 official or organ.
3. The Parties recognize the right of all persons to submit to the Commission and to other human rights bodies applications concerning alleged violations of human rights, in accordance with the procedures of this Annex and such bodies. The Parties shall not undertake any punitive action directed against persons who intend to submit, or have submitted, such allegations.

*Article III*  
*Facilities, Staff and Expenses*

1. The Commission shall have appropriate facilities and a professionally competent staff. There shall be an Executive Officer, appointed jointly by the Ombudsman and the President of the Chamber, who shall be responsible for all necessary administrative arrangements with respect to facilities and staff. The Executive Officer shall be subject to the direction of the Ombudsman and the President of the Chamber insofar as concerns their respective administrative and professional office staffs.
2. The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne by Bosnia and Herzegovina. The salaries and expenses shall be fully adequate to implement the Commission's mandate.
3. The Commission shall have its headquarters in Sarajevo, including both the headquarters Office of the Ombudsman and the facilities for the Chamber. The Ombudsman shall have at least one additional office in the territory of the Federation and the Republika Srpska and at other locations as it deems appropriate. The Chamber may meet in other locations where it determines that the needs of a particular case so require, and may meet at any place it deems appropriate for the inspection of property, documents or other items.
4. The Ombudsman and all members of the Chamber shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. When the Ombudsman and members of the Chamber are not citizens of Bosnia and Herzegovina, they and their families shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.
5. With full regard for the need to maintain impartiality, the Commission may receive assistance as it deems appropriate from any governmental, international, or non-governmental organisation.

**Part B: HUMAN RIGHTS OMBUDSMAN**

*Article IV*  
*Human Rights Ombudsman*

1. The Parties hereby establish the Office of the Human Rights Ombudsman (the "Ombudsman").
2. The Ombudsman shall be appointed for a non-renewable term of five years by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE), after consultation with the Parties. He or she shall be independently responsible for choosing his or her own staff. Until the transfer described in Article XIV below, the Ombudsman may not be a citizen of Bosnia and Herzegovina or of any neighboring state. The Ombudsman appointed after that transfer shall be appointed by the Presidency of Bosnia and Herzegovina.
3. Members of the Office of the Ombudsman must be of recognised high moral standing and have competence in the field of international human rights.
4. The Office of the Ombudsman shall be an independent agency. In carrying out its mandate, no person or organ of the Parties may interfere with its functions.

*Article V*  
*Jurisdiction of the Ombudsman*

1. Allegations of violations of human rights received by the Commission shall generally be directed to the Office of the Ombudsman, except where an applicant specifies the Chamber.
2. The Ombudsman may investigate, either on his or her own initiative or in response to an allegation by any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, alleged or apparent violations of human rights within the scope of paragraph 2 of Article II. The Parties undertake not to hinder in any way the effective exercise of this right.
3. The Ombudsman shall determine which allegations warrant investigation and in what priority, giving particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
4. The Ombudsman shall issue findings and conclusions promptly after concluding an investigation. A Party identified as violating human rights shall, within a specified period, explain in writing how it will comply with the conclusions.
5. Where an allegation is received which is within the jurisdiction of the Human Rights Chamber, the Ombudsman may refer the allegation to the Chamber at any stage.

## *ANNEX 6 to the General Framework Agreement for Peace in BiH*

6. The Ombudsman may also present special reports at any time to any competent government organ or official. Those receiving such reports shall reply within a time limit specified by the Ombudsman, including specific responses to any conclusions offered by the Ombudsman.
7. The Ombudsman shall publish a report, which, in the event that a person or entity does not comply with his or her conclusions and recommendations, will be forwarded to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, as well as referred for further action to the Presidency of the appropriate Party. The Ombudsman may also initiate proceedings before the Human Rights Chamber based on such Report. The Ombudsman may also intervene in any proceedings before the Chamber.

### *Article VI Powers*

1. The Ombudsman shall have access to and may examine all officials documents, including classified ones, as well as judicial and administrative files, and can require any person, including a government official, to cooperate by providing relevant information, documents and files. The Ombudsman may attend administrative hearings and meetings of other organs and may enter and inspect any place where persons deprived of their liberty are confined or work.
3. The Ombudsman and staff are required to maintain the confidentiality of all confidential information obtained, except where required by order of the Chamber, and shall treat all documents and files in accordance with applicable rules.

## **Part C: HUMAN RIGHTS CHAMBER**

### *Article VII Human Rights Chamber*

1. The Human Rights Chamber shall be composed of fourteen members.
2. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members and the Republika Srpska shall appoint two members. The Committee of Ministers of the Council of Europe, pursuant to its resolution (93)6, after consultation with the Parties, shall appoint the remaining members, who shall not be citizens of Bosnia and Herzegovina or any neighboring state, and shall designate one such member as the President of the Chamber.
3. All members of the Chamber shall possess the qualifications required for appointment to high judicial office or be jurists of recognized competence. The members of the Chamber shall be appointed for a term of five years and may be reappointed.
4. Members appointed after the transfer described in Article XIV below shall be appointed by the Presidency of Bosnia and Herzegovina.

### *Article VIII Jurisdiction of the Chamber*

1. The Chamber shall receive by referral from the Ombudsman on behalf of an applicant, or directly from any Party or person, non-governmental organisation, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.
2. The Chamber shall decide which applications to accept and in what priority to address them. 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 and that the application has been filed with the Commission within six months from such date on which the final decision was taken.
  - (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.
  - (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.
  - (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.

## *ANNEX 6 to the General Framework Agreement for Peace in BiH*

- (e) In principle, the Chamber shall endeavor to accept and to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.
  - (f) Applications which entail requests for provisional measures shall be reviewed as a matter of priority in order to determine (1) whether they should be accepted and, if so (2) whether high priority for the scheduling of proceedings on the provisional measures request is warranted.
3. The Chamber may decide at any point in its proceedings to suspend consideration of, reject or 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 application; provided that such result is consistent with the objective of respect for human rights.

### *Article IX Friendly Settlement*

- 1. At the outset of a case or at any stage during the proceedings, the Chamber may attempt to facilitate an amicable resolution of the matter on the basis of respect for the rights and freedoms referred to in this Agreement.
- 2. If the Chamber succeeds in effecting such a resolution it shall publish a Report and forward it to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the OSCE and the Secretary General of the Council of Europe. Such a Report shall include a brief statement of the facts and the resolution reached. The report of a resolution in a given case may, however, be confidential in whole or in part where necessary for the protection of human rights or with the agreement of the Chamber and the parties concerned.

### *Article X Proceedings before the Chamber*

- 1. The Chamber shall develop fair and effective procedures for the adjudication of applications. Such procedures shall provide for appropriate written pleadings and, on the decision of the Chamber, a hearing for oral argument or the presentation of evidence. The Chamber shall have the power to order provisional measures, to appoint experts, and to compel the production of witnesses and evidence.
- 2. The Chamber shall normally sit in panels of seven, composed of two members from the Federation, one from the Republika Srpska, and four who are not citizens of Bosnia and Herzegovina or any neighboring state. When an application is decided by a panel, the full Chamber may decide, upon motion of a party to the case or the Ombudsman, to review the decision; such review may include the taking of additional evidence where the Chamber so decides. References in this Annex to the Chamber shall include, as appropriate, the Panel, except that the power to develop general rules, regulations and procedures is vested in the Chamber as a whole.
- 3. Except in exceptional circumstances in accordance with its rules, hearings of the Chamber shall be held in public.
- 4. Applicants may be represented in proceedings by attorneys or other representatives of their choice, but shall also be personally present unless excused by the Chamber on account of hardship, impossibility, or other good cause.
- 5. The Parties undertake to provide all relevant information to, and to cooperate fully with, the Chamber.

### *Article XI Decisions*

- 1. Following the conclusion of the proceedings, the Chamber shall promptly issue a decision, which shall address:
  - (a) Whether the facts found indicate a breach by the Party concerned of its obligations under this Agreement; and if so
  - (b) what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.
- 2. The Chamber shall make its decisions by a majority of members. In the event a decision by the full Chamber results in a tie, the President of the Chamber shall cast the deciding vote.
- 3. Subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding.
- 4. Any member shall be entitled to issue a separate opinion on any case.

## *ANNEX 6 to the General Framework Agreement for Peace in BiH*

5. The Chamber shall issue reasons for its decisions. Its decisions shall be published and forwarded to the parties concerned, the High Representative described in Annex 10 to the General Framework Agreement while such office exists, the Secretary General of the Council of Europe and the OSCE.
6. The Parties shall implement fully decisions of the Chamber.

### *Article XII Rules and Regulations*

The Chamber shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions, including provisions for preliminary hearings, expedited decisions on provisional measures, decisions by panels of the Chamber, and review of decisions made by any such panels.

## **CHAPTER THREE: GENERAL PROVISIONS**

### *Article XIII Organizations Concerned with Human Rights*

1. The Parties shall promote and encourage the activities of non-governmental and international organizations for the protection and promotion of human rights.
2. The Parties join in inviting the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia and Herzegovina, including through the establishment of local offices and the assignment of observers, rapporteurs, or other relevant persons on a permanent or mission-by-mission basis and to provide them with full and effective facilitation, assistance and access.
3. The Parties shall allow full and effective access to non-governmental organizations for purposes of investigating and monitoring human rights conditions in Bosnia and Herzegovina and shall refrain from hindering or impeding them in the exercise of these functions.
4. All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to the organizations established in this Agreement; any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in the Appendix to this Annex; the International Tribunal for the Former Yugoslavia; and any other organization authorised by the UN Security Council with a mandate concerning human rights or humanitarian law.

### *Article XIV Transfer*

Five years after this Agreement enters into force, the responsibility for the continued operation of the Commission shall transfer from the Parties to the institutions of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

### *Article XV Notice*

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina.

### *Article XVI Entry into Force*

This Agreement shall enter into force upon signature.

**APPENDIX**

**HUMAN RIGHTS AGREEMENTS**

- 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- 1949 Geneva Conventions I-IV on the Protection of the Victims of War and the 1977 Geneva Protocols I-II thereto
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto
- 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
- 1957 Convention on the Nationality of Married Women
- 1961 Convention on the Reduction of Statelessness
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
- 1966 Covenant on Economic, Social and Cultural Rights
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child
- 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 1992 European Charter for Regional or Minority Languages
- 1994 Framework Convention for the Protection of National Minorities

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## **RULES OF PROCEDURE**

### **HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA**

Adopted on 13 December 1996  
(Amended on 15 May and 11 September 1998, 8 March 2001, 4 November 2002 and on 8 March 2003)

#### **PREAMBLE**

The Human Rights Chamber,

Having regard to:

- the Agreement on Human Rights (Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina) between the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, hereinafter called the "Agreement";
- pursuant to Article X paras. 1 and 2 and Article XII of the Agreement,

Adopts the present Rules:

#### **TITLE I ORGANISATION OF THE CHAMBER**

##### **Chapter I The Chamber**

###### *Rule 1 Independence of the Chamber*

The Chamber, established under the Agreement as a judicial body, shall function in complete independence.

###### *Rule 2 Plenary Chamber and Panels*

1. The Chamber sits in plenary session and in Panels set up under Article X para. 2 of the Agreement.
2. Unless otherwise stated, the terms "Chamber" and "President" in these Rules shall mean "Panel" and "President of the Panel" in relation to cases referred to Panels, and "Chamber" and "President of the Chamber" in relation to cases referred to the Chamber.

##### **Chapter 2 Members of the Chamber**

###### *Rule 3 Irremovability of members and solemn declaration*

1. The members of the Chamber shall serve in their personal capacity as judges and may not be removed from their office during their term as defined in Article VII (3) of the Agreement.
2. Before taking up their duties, members of the Chamber shall, at the first meeting of the Chamber at which they are present after their appointment, make the following solemn declaration:  
"I solemnly declare that I will exercise all my powers and duties honourably and faithfully, impartially and conscientiously and that I will keep secret all Chamber proceedings."

###### *Rule 4 Order of precedence*

1. Members of the Chamber shall take precedence after the President and Vice-President according to the length of time they have been in office.
2. Members having the same length of time in office shall take precedence according to age.
3. Re-appointed members shall take precedence having regard to the duration of their previous terms of office.

*Rule 5*  
*Resignation of a member*

Resignation of a member shall be notified to the President of the Chamber who shall transmit it to the Parties, the Secretaries General of the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) and the High Representative referred to in Annex 10 to the General Framework Agreement while such office exists.

**Chapter 3**  
**Presidency of the Chamber**

*Rule 6*  
*Duties of the President of the Chamber*

The President of the Chamber shall direct the work of the Chamber and preside at its sessions.

*Rule 7*  
*Presidency of the Panels*

1. The President shall also preside at the meetings of one Panel. The Vice-President shall preside at the meetings of the other Panel.
2. The term "President" shall in these Rules, where appropriate, include also any member acting as President.

*Rule 8*  
*Election of the Vice-Presidents of the Chamber and of the Panels*

1. The Chamber shall elect its Vice-President for a term of office of one year.
2. Each Panel, voting separately, shall elect its Vice-President as soon as the Panels have been constituted according to Rule 26 para. 3.
3. The elections shall be by secret ballot; only the members present shall take part.
4. Election shall be by an absolute majority of the members. If no member receives such a majority, a second ballot shall take place. The member receiving the most votes shall then be elected. In the case of equal voting the member having precedence under Rule 4 shall be elected.

*Rule 9*  
*Duties of the Vice-Presidents of the Chamber and of the Panels*

1. The Vice-President shall take the place of the President of the Chamber if the latter is prevented from carrying out the duties of President or if the office of President is vacant.
2. The Vice-President of a Panel shall take the presidency of the Panel if the President or the Vice-President is prevented from carrying out his duties or if the office of President of the Panel is vacant.
3. The President of the Chamber may delegate certain functions to the Vice-President.

*Rule 10*  
*Substitution for the President and the Vice-President*

1. If the President of the Chamber and the Vice-President are at the same time prevented from carrying out their duties, or if their offices are at the same time vacant, the duties of President of the Chamber shall be carried out by another member according to the order of precedence laid down in Rule 4.
2. If the persons presiding at the meetings of a Panel according to Rules 7 and 9 are prevented from carrying out their duties in respect of the Panel, or if their offices are at the same time vacant, their duties shall be carried out by another member according to the order of precedence laid down in Rule 4.

*Rule 11*  
*Members prevented from presiding*

Members of the Chamber shall not preside in cases relating to the Party by which they were appointed.

*Rule 12*

*Withdrawal of the President or the Vice-President*

Where the President of the Chamber or the Vice-President for some special reason consider that they should not preside in a particular case, they shall be replaced in accordance with the provisions of Rule 9 and Rule 10.

**Chapter 4**  
**Secretariat of the Chamber**

*Rule 13*

*Appointment of the Executive Officer, the Registrar and other staff*

1. The Executive Officer (and Deputy Executive Officer) of the Human Rights Commission shall be appointed jointly by the Ombudsperson and the President of the Chamber.
2. The Secretariat of the Chamber shall consist of the Registrar, the Deputy Registrar, and other administrative and professional staff appointed under Article III para. 1 of the Agreement.
3. The Registrar and the Deputy Registrar shall be appointed by the Chamber.
4. The staff of the Chamber, other than the Registrar and the Deputy Registrar, shall be appointed by the President of the Chamber after consultation with the Registrar.
5. The Registrar shall be subject to the direction of the President of the Chamber in respect of the Secretariat of the Chamber.
6. The Secretariat shall be based at the seat of the Chamber in Sarajevo.

*Rule 14*

*Duties of the Registrar*

1. The Registrar shall, under the direction of the President, be responsible for the work of the Secretariat and, in particular:
  - a) shall assist the Chamber and its members in the fulfilment of their duties;
  - b) shall be the channel for all communications concerning the Chamber;
  - c) shall have custody of the archives of the Chamber.
2. The Registrar shall be responsible for the publication of:
  - a) the decisions of the Chamber;
  - b) any other document as decided by the Chamber.

*Rule 15*

*The register of applications*

A special register shall be kept at the Secretariat in which shall be entered the date of registration of each application and the date of the termination of the relevant proceedings before the Chamber.

**TITLE II**  
**THE FUNCTIONING OF THE CHAMBER**

**Chapter 1**  
**General Rules**

*Rule 16*

*The seat of the Chamber*

1. The seat of the Chamber shall be in Sarajevo.
2. The Chamber may decide to hold sessions elsewhere if it thinks fit.
3. The Chamber may decide, at any stage of the examination of an application, that it is necessary that an investigation or any other of its functions be carried out elsewhere by it or one or more of its members.

*Rule 17*  
*Sessions of the Chamber*

1. The Chamber shall determine the number and dates of its sessions.
2. The Chamber shall meet at other times by decision of the President as circumstances may require. It shall also meet if at least one third of its members so request.
3. Members who are prevented by illness or other serious reason from attending all or part of any session of the Chamber or from fulfilling any other duty shall, as soon as possible, give notice thereof to the Registrar who shall inform the President.

*Rule 18*  
*Confidentiality of deliberations*

1. All deliberations of the Chamber shall be and shall remain confidential. Only the Registrar, members of the Secretariat, interpreters, and persons providing technical or secretarial assistance to the Chamber may be present at its meetings, unless the Chamber decides otherwise.
2. At any stage in the examination of an application, the Registrar may communicate information to the press to an extent compatible with the legitimate interests of the parties and subject to any special directions by the Chamber.

*Rule 19*  
*Voting*

1. After any deliberations and before a vote is taken on any matter in the Chamber, the President may request members to state their opinions thereon.
2. If the voting is equal, a roll call vote shall then be taken and the President shall have the casting vote.
3. In decisions on the admissibility of an application, or in expressing an opinion on a breach of the Agreement, members shall not abstain.

*Rule 20*  
*Records of deliberations and hearings*

1. The records of the deliberations shall be limited to a record of the subject of the discussions, the votes taken, the names of those voting for and against a motion and any statements expressly made for insertion therein.
2. The records of hearings shall contain the names of the members present and of any persons appearing; they shall give a brief account of the course of the hearing and of any decision taken.

*Rule 21*  
*Safeguards for the impartiality of the members*

1. Members shall not take part in the examination of an application before the Chamber, where they:
  - a) have any personal interest in the case;
  - b) have participated in any decision on the facts on which the application is based as adviser to any of the parties or as a member of any tribunal or body of enquiry.
2. If, in any case of doubt with regard to paragraph 1 of this Rule, or in any other circumstances which might appear to affect the impartiality of members in their examination of an application, they or the President consider that they should not take part, the Chamber shall decide.

*Rule 22*  
*Withdrawal of members*

When, for any special reason other than under Rule 21, members consider that they should not take part or continue to take part in the examination of a case, they shall inform the President.

*Rule 23*  
*Quorum after withdrawal of members*

Any member who, under the provisions of Rule 21 or Rule 22, does not take part in the examination of an application, shall not form part of the quorum during such examination.

**Chapter 2**  
**The Plenary Chamber**

*Rule 24*  
*Applications determined by the Plenary Chamber*

The Plenary Chamber shall determine applications:

- a) submitted by a party according to Articles II para. 2 and VIII para. 1 of the Agreement;
- b) when a Panel has relinquished jurisdiction according to Rule 29 para. 2 of the Rules of Procedure;
- c) when the case has been referred to it under Rule 63.

*Rule 25*  
*Quorum of the Plenary Chamber*

A quorum of the Plenary Chamber shall consist of eight members.

**Chapter 3**  
**The Panels**

*Rule 26*  
*Constitution of the Panels*

1. There shall be two Panels set up under Article X para. 2 of the Agreement.
2. The Panels shall be composed of four of the members appointed by the Committee of Ministers of the Council of Europe, two of the members appointed by the Federation of Bosnia and Herzegovina, and one of the members appointed by the Republika Srpska.
3. The Panels shall be constituted for a fixed period as determined by the Chamber.
4. The Chamber may make such special arrangements concerning the constitution of Panels as it sees fit.

*Rule 27*  
*Succession of Panel members*

When members of a Panel cease to be members of the Chamber before the expiration of the period for which the Panel was constituted, their successors in the Chamber shall succeed them as members of the Panel.

*Rule 28*  
*Quorum and meetings of the Panels*

1. A quorum of a Panel shall be four members.
2. As a rule, the Panels shall meet during the sessions of the Plenary Chamber.
3. Where circumstances require, a Panel or, when it is not in session, its President upon consultation with the President of the Chamber, may decide that the Panel may meet when the Plenary Chamber is not in session.

*Rule 29*  
*Referral of applications to the Plenary Chamber and the Panels*

1. Applications shall normally be referred to a Panel in accordance with general guidelines decided on by the Plenary Chamber.
2. Where a case pending before a Panel raises a serious question as to the interpretation of the Agreement or of any of the international agreements referred to in it, or where the resolution of a question before a Panel might have a result inconsistent with previous jurisprudence of the Chamber, the Panel may at any time before taking a final decision relinquish jurisdiction in favour of the Plenary Chamber.
3. The President may decide to refer to the Plenary Chamber any application not yet placed before a Panel for consideration in accordance with Rule 49 which, to her,
  - a) appears to raise a serious question as to the interpretation of the Agreement or of any of the international agreements referred to in it, or
  - b) appears to require a final decision to be taken without undue delay, or
  - c) for any other justified reason appears to require such a course.

4. The President may, at any stage of the proceedings, proprio motu or on the suggestion of a Panel, decide to transfer an application from one Panel to another if she considers that such action is indicated to prevent the emergence of divergent case-law, or to redress an imbalance in workload, or for another reason warranted.

### **TITLE III PROCEDURE**

#### **Chapter 1 General Rules**

##### *Rule 30 Official languages*

1. The official languages of the Chamber shall be Bosnian, Croatian, English and Serbian.
2. The President may authorise a member to speak in another language.
3. The President may permit the use by a party or a person representing that party of a language other than an official language either in hearings or documents. Any such documents shall be submitted in an original and at least two copies.
4. The Registrar is authorised, in correspondence with an applicant, to employ a language other than an official language.
5. Interpreters or translators employed by the Chamber for its sessions or hearings shall make the following declaration before performing any duties:  
"I solemnly declare that I will perform my duties as interpreter or translator faithfully, independently, impartially and with full respect for the duty of confidentiality."

##### *Rule 31 Representation of Parties to the Agreement*

The Parties to the Agreement shall be represented before the Chamber by their agents who may have the assistance of advisers.

##### *Rule 32 Presentation of applications by applicants; representation of applicants*

1. Persons, non-governmental organisations, or groups of individuals claiming to be a victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, may present and conduct applications under Article VIII para. 1 of the Agreement.
2. Such applicants may appoint and be represented in proceedings before the Chamber by attorneys or other representatives of their choice.
3. Any such applicant or representative shall appear in person before the Chamber:
  - a) to present the application in any hearing fixed by the Chamber, or
  - b) for any other purpose, if invited by the Chamber.
4. The Chamber may exempt an applicant from being present on account of hardship, impossibility or other good cause.
5. In the other provisions of these Rules the term "applicant" shall, where appropriate, include the applicant's representatives.

##### *Rule 32 bis Applications addressed to the Human Rights Commission*

The Registrar shall forward to the Human Rights Ombudsperson any application received by the Chamber but addressed to the Human Rights Commission unless the applicant expressly specifies that the matter is to be dealt with by the Chamber.

##### *Rule 32 ter Amici curiae*

1. The Chamber may at any stage of the proceedings allow or invite any governmental or non-governmental body or organisation, individual, or group of individuals, and in particular a Human Rights Ombudsman

## *Rules of Procedure*

appointed by the Federation of Bosnia and Herzegovina or the Republika Srpska, to participate as amicus curiae.

2. Such participation may be limited to factual or legal questions indicated by the Chamber's decision.
3. The Chamber's decision in the matter shall set out the procedure to be followed.

### *Rule 33*

#### *Action by the Chamber in specific cases*

1. The Chamber may, proprio motu or at the request of a party, take any action which it considers expedient or necessary for the proper performance of its duties under the Agreement.
2. The Chamber may delegate one or more of its members to take any such action in its name, and in particular to hear witnesses or experts, to examine documents or to visit any locality. Such member or members shall duly report to the Chamber.
3. In case of urgency when the Chamber is not in session, the President of the Chamber or, if he is prevented from carrying out his duties, the Vice-President, may take any necessary action on behalf of the Chamber. As soon as the Chamber is again in session, any action which has been taken under this paragraph shall be brought to its attention.

### *Rule 34*

#### *Joinder of applications*

The Chamber may, if it considers necessary, order the joinder of two or more applications.

### *Rule 35*

#### *Priority of particular applications*

1. The Chamber shall deal with applications in the order in which they become ready for examination.
2. The Chamber may, however, decide to give precedence to a particular application.
3. The Chamber shall give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.

### *Rule 36*

#### *Provisional measures*

1. Applications entailing requests for provisional measures shall be reviewed as a matter of priority. The Chamber, or when it is not in session, the President, shall determine in particular whether such applications should be accepted and, if so, whether high priority for the scheduling of proceedings on the provisional measures requested is warranted.
2. The Chamber or, when it is not in session, the President, shall decide whether, in the interest of the parties or the proper conduct of proceedings, any provisional measures should be ordered under Article X para. 1 of the Agreement.
3. The Chamber or, when it is not in session, the President, shall bring any such order to the notice of the party concerned by any available means with a view to ensuring its effective implementation in accordance with the Agreement.
4. Where the President has ordered any provisional measures he shall report his action to the Chamber under para. 3 of Rule 33.

## **Chapter 2** **Hearings**

### *Rule 37*

#### *Public nature and organization of hearings*

1. Hearings before the Chamber shall be held in public.
2. The press and public may be excluded from all or part of the hearing in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.
3. If the applicant is a non-governmental organisation or group of individuals, the Chamber shall ascertain that those appearing are entitled to represent it or them.

4. When it considers it in the interest of the proper conduct of a hearing, the Chamber may limit the number of the parties' representatives or advisers who may appear.
5. The parties shall duly be informed of the Chamber's decision to conduct a hearing. The parties shall transmit to the Chamber at least ten days before the date of the opening of the hearing the names and functions of the persons who will appear on their behalf at the hearing.
6. The provisions of the present Rule shall apply mutatis mutandis to hearings before delegates of the Chamber, in accordance with Rule 33 para. 2.

*Rule 38*

*Failure by a party to appear*

Where, without justified cause, a party fails to appear, the Chamber may, provided that it is satisfied that such a course is consistent with the proper administration of justice, proceed with the hearing.

*Rule 39*

*Summoning of individual applicants, experts and witnesses*

1. Any individual applicant, expert or other person whom the Chamber decides to hear as a witness, shall be summoned by the Registrar. The summons shall indicate:
  - a) the parties to the application;
  - b) the facts or issues regarding which the person concerned will be heard;
  - c) the arrangements made, in accordance with Rule 43 para. 1 or 2, to reimburse the persons concerned for any expenses incurred by them.
2. Any such persons may, if they have not sufficient knowledge of the official languages, be authorised by the President to speak in any other language.

*Rule 40*

*Solemn declaration of witnesses and experts*

After establishing the identity of the witnesses or experts the President or the principal delegate mentioned in Rule 33 para. 2, shall request them to make the following declaration:

- a) for witnesses:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."
- b) for experts:

"I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere and expert belief."

*Rule 41*

*Conduct of hearings*

1. The President, or the principal delegate, shall conduct the hearing or examination of any persons heard. He shall determine the order in which the parties shall be called upon to speak.
2. Any member may put questions to the parties or to the persons heard with the leave of the President or the principal delegate.
3. A party may, with the permission of the President or of the principal delegate, also put questions to any person heard.

*Rule 42*

*Record of hearings*

1. The Registrar shall be responsible for the production of verbatim records of hearings before the Chamber.
2. Hearings before the Chamber shall be recorded on tape. The parties, or where appropriate, their representatives shall receive a draft verbatim record of their arguments, statements or evidence in order that they may propose corrections to the Registrar within a time-limit laid down by the President. After necessary corrections, if any, the text shall constitute certified matters of record.

*Rule 43*

*Costs*

1. The expenses incurred by any person who is heard by the Chamber as a witness or as an expert at the request of a party shall be borne either by that party or the Chamber as the Chamber may decide.
2. The expenses incurred by any such person whom the Chamber hears proprio motu shall be borne by the Chamber.
3. Where written expert opinion is obtained by the Chamber or at its request, any costs incurred shall be borne by the Chamber.
4. Where written evidence is submitted by a party at the request of the Chamber, any costs incurred shall be borne by that party or the Chamber as the Chamber may decide.
5. Where written evidence, including any expert evidence, is submitted by a party other than at the request of the Chamber, any costs incurred shall be borne by that party unless the Chamber decides otherwise.
6. The amount of any costs or expenses payable by the Chamber under this Rule shall be agreed by the President.

**Chapter 3**

**Amicable Resolutions**

*Rule 44*

*Amicable resolutions*

1. At the outset of a case or at any stage during the proceedings, the Chamber may attempt to facilitate an amicable resolution of the matter on the basis of respect for the rights and freedoms referred to in the Agreement.
2. If the Chamber succeeds in effecting such a resolution, it shall publish a Report and forward it to the High Representative referred to in Annex 10 to the General Framework Agreement while such office exists, the Secretaries General of the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe, as well as to the parties to the case.
3. The Chamber's report shall include a brief statement of the facts and the resolution reached.
4. The report of a resolution in a given case may, however, be confidential in whole or in part where necessary for the protection of human rights or with the agreement of the Chamber and the parties concerned.
5. An amicable resolution of a case concluded by intervention of the Chamber has legal force equivalent to a final decision of the Chamber.

**Chapter 4**

**Submission and Content of Applications**

*Rule 45*

*Form of applications*

1. Any application made under Article VIII para. 1 of the Agreement shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.
2. Where an application is submitted by a non-governmental organisation or by a group of individuals, it shall be signed by those persons competent to represent such organisation or group. The Chamber shall determine any question as to whether the persons who have signed an application are competent to do so.
3. Where applicants are represented in accordance with para. 2 of Rule 32, a power of attorney or written authorisation shall be supplied by their representative or representatives.

*Rule 46*

*Content of applications*

1. Any application under Article VIII para. 1 of the Agreement shall set out:
  - a) the identity of the applicant and any alleged victim including, where appropriate, the name, age, occupation and address of the person concerned;
  - b) the name, occupation and address of the representative, if any;
  - c) the name of the Party against which the application is made;
  - d) a statement of the facts;
  - e) a statement of the rights under the Agreement alleged to have been violated, and any relevant argument;
  - f) a statement of any provisional measures or other remedies sought; and any relevant document.

2. Applicants shall furthermore:
  - a) provide information as to whether the criteria referred to in Article VIII para. 2(a) of the Agreement have been satisfied;
  - b) indicate whether the subject-matter of the application has already been submitted to the Chamber, the Ombudsperson, any other Commission established under the Annexes to the General Framework Agreement or any other international procedure of adjudication, investigation or settlement;
  - c) indicate in which of the official languages they wish to receive the Chamber's decisions;
  - d) indicate whether they do or do not object to their identity being disclosed to the public.
3. Applications, other than those presented by a Party or referred to the Chamber by the Ombudsperson, should normally be made on the application form provided by the Registrar.
4. Failure to comply with the requirements set out under paragraphs 1-3 above may result in the application not being registered and examined by the Chamber.
5. The date of introduction of the application shall in general be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application. The Chamber may nevertheless for good cause decide that a different date be considered to be the date of introduction.
6. Applicants shall keep the Chamber informed of any change of their address and of all circumstances relevant to the application.

## **Chapter 5**

### **Proceedings on the Admissibility of an Application**

#### *Rule 47* *Inter-Party applications*

1. Where, pursuant to Article VIII para. 1 of the Agreement, an application is brought before the Chamber by a Party, the President of the Chamber shall give notice of such application to the Party against which the claim is made and shall invite it to submit to the Chamber its observations in writing on the admissibility of such application. The observations so obtained shall be communicated to the Party which brought the application and it may submit written observations in reply.
2. Before deciding upon the admissibility of the application the Plenary Chamber may invite the Parties to submit further observations, either in writing or at a hearing.

#### *Rule 47 bis* *Applications pending before the Human Rights Ombudsperson*

The following shall apply to applications not referred to the Chamber by the Human Rights Ombudsperson: The Chamber may declare inadmissible, or suspend consideration of, any application concerning an allegation of a violation of human rights which is currently pending before the Human Rights Ombudsperson.

#### *Rule 48* *Information to respondent Party in urgent cases*

In any case of urgency, the Registrar may, without prejudice to the taking of any other procedural steps, inform the respondent Party in an application, by any available means, of the introduction of the application and of a summary of its subject-matter.

#### *Rule 49* *First consideration and written proceedings*

1. Any application submitted pursuant to Article VIII para. 1 of the Agreement, other than one submitted by a Party to the Agreement, shall be placed before the Chamber which shall consider the admissibility of the application and the procedure to be followed.
2. The Chamber may declare at once that the application is inadmissible under the second paragraph of Article VIII of the Agreement or may decide to suspend consideration of, reject or strike out the application under para. 3 of Article VIII.
3. Alternatively, the Chamber may:
  - a) request relevant information on matters connected with the application from the applicant or respondent Party concerned. Any information so obtained from the respondent Party shall be communicated to the applicant for comments;

## *Rules of Procedure*

- b) give notice of the application to the respondent Party against which it is brought and invite that Party to present to the Chamber written observations on the application. Observations so obtained shall be communicated to the applicant for any written observations in reply.

### *Rule 50*

#### *Further written proceedings or hearings in particular cases*

- 1. Before deciding upon the admissibility of the application, the Chamber may invite the parties:
  - a) to submit further observations in writing;
  - b) to submit further observations orally at a hearing on issues of admissibility and at the same time, if the Chamber so decides, on the merits of the application.

### *Rule 51*

#### *Time-limits*

Time-limits shall be fixed by the Chamber for any information, observations or comments requested under Rule 49 or Rule 50.

### *Rule 52*

#### *Decision on admissibility*

- 1. Any decision of the Chamber on admissibility under Article VIII para. 2 of the Agreement shall be issued in writing and shall be communicated by the Registrar to the applicant and to the respondent Party.
- 2. Para. 1 of this Rule shall apply mutatis mutandis to any decision of the Chamber under Article VIII para. 3 to suspend consideration of, reject or strike out an application which has not already been declared admissible.
- 3. The decision of the Chamber shall state whether it was taken unanimously or by majority and shall be accompanied or followed by reasons.
- 4. Any member who has taken part in the consideration of the case shall be entitled to annex to the decision on admissibility either a separate opinion concurring with or dissenting from that decision, or a bare statement of dissent.

## **Chapter 6**

### **Procedure after the Admission of an Application**

### *Rule 53*

#### *Consideration of the merits*

- 1. After deciding to admit an application, the Chamber shall decide on the procedure to be followed:
  - a) for the examination of the application under Article XI subpara. 1 (a) of the Agreement as to whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement;
  - b) with a view to securing an amicable resolution of the case under Article IX paras. 1 and 2.
- 2. The Chamber may invite the parties to submit further evidence or observations. The Chamber shall decide in each case whether such observations should be submitted in writing or orally at a hearing.
- 3. The Chamber shall lay down the time-limits within which the parties shall submit evidence and written observations.

### *Rule 54*

#### *Provisional opinions*

The Chamber may, when it sees fit, deliberate with a view to reaching a provisional opinion on the merits of the case.

### *Rule 55*

#### *Decisions under Article VIII paragraph 3 of the Agreement*

Where the Chamber decides to suspend consideration of, reject or strike out an application under Article VIII para. 3 of the Agreement, its decision shall be accompanied by reasons. The Registrar shall communicate the decision to the parties.

**Chapter 7**  
**The Decision of the Chamber on the Merits**

*Rule 56*

*Failure by a party to appear or to present its case*

Where a party fails to appear or to present its case, the Chamber shall, subject to the provisions of Rule 55, give a decision in the case.

*Rule 57*

*Form of the decision on the merits*

The decision shall contain:

- a) the names of the President and the members constituting the Chamber or the Panel and also the names of the Registrar and where appropriate, the Deputy Registrar;
- b) the dates on which it was adopted and delivered;
- c) description of the party or parties;
- d) the names of the representatives of the parties;
- e) an account of the procedure followed;
- f) a summary of the submissions of the parties;
- g) the facts of the case;
- h) the reasons in point of law;
- i) the operative provisions of the decision;
- j) the decision, if any, in respect of costs;
- k) the number of members constituting the majority.

*Rule 58*

*Content of the decision on the merits*

The reasons in point of law and the operative part of the decision shall in particular address:

- a) whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement; and, if so,
- b) what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, and any provisional measures.

*Rule 59*

*Decision on monetary relief*

Where the Chamber finds that there is a breach of the Agreement, it shall in the same decision decide on any monetary relief (including relief for pecuniary and non-pecuniary injuries) if that question is ready for decision. If the question is not ready for decision, the Chamber shall reserve it in whole or in part and shall fix the further procedure.

*Rule 60*

*Delivery of the decision*

- 1. The decision shall be signed by the President and by the Registrar.
- 2. The decision shall be read out by the President, or by another member of the Chamber delegated by him, at a public hearing in one of the official languages. It shall not be necessary for the other members to be present. The parties shall be informed in due time of the date and time of delivery of the decision.
- 3. However, in respect of a decision relating only to monetary relief according to Rule 59, the President may direct that the notification provided for under paragraph 4 of this Rule shall count as delivery.
- 4. The decision shall be transmitted by the Registrar to the parties concerned as well as the High Representative referred to in Annex 10 to the General Framework Agreement while such office exists, the Secretaries General of the Council of Europe and the OSCE, and the Ombudsperson.
- 5. The original, duly signed and sealed, shall be placed in the archives of the Chamber.

*Rule 61*

*Separate opinions and statements of dissent*

Any member who has taken part in the consideration of the case shall be entitled to annex to the decision on the merits either a separate opinion concurring with or dissenting from that decision, or a bare statement of dissent.

**Chapter 8**  
**Publication of Decisions**

*Rule 62*

*Publication of decisions*

1. The Registrar shall be responsible for the publication of decisions of the Chamber.
2. Any decision on the merits and any decision declaring an application admissible or inadmissible shall be publicly available. Other decisions shall be publicly available if the Chamber so decides.
3. The Parties to the Agreement may be requested to publish decisions of the Chamber in their Official Journals.

**Chapter 9**  
**Review Proceedings**

*Rule 63*

*Request for review*

1. Upon motion of a party to the case or the Ombudsperson the full Chamber may decide to review:
  - a decision of a Panel declaring an application inadmissible under para. 2 of Article VIII of the Agreement;
  - a decision of a Panel to reject an application under Article VIII para. 3 of the Agreement;
  - a decision of a Panel on the merits of an application, including a decision on pecuniary or other remedies, under Article XI of the Agreement.
2. Any such request for review shall specify the grounds of the request.
3. Any such request for review shall be submitted:
  - a) if directed against a decision read out at a public hearing in pursuance of Rule 60, paragraph 2: within one month starting on the day following that on which the Panel's reasoned decision was so read out;
  - b) in all other cases: within one month starting on the day following that on which the Panel's reasoned decision was delivered to the Parties in writing.

*Rule 64*

*Procedure for deciding a request for review*

1. Any request for review under Rule 63 shall be referred to the Panel which did not take the decision in question and that Panel shall make a recommendation to the Plenary Chamber as to whether the decision should be reviewed or not.
2. The Plenary Chamber shall consider the request for review and the recommendation of the Panel and decide whether to accept the request or not. It shall not accept the request unless it considers (a) that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) that the whole circumstances justify reviewing the decision.

*Rule 65*

*Procedure after acceptance of a request for review*

1. If the Plenary Chamber accepts the request for review it shall decide on the procedure to be followed. It may invite the parties to submit written or oral observations or additional evidence on any aspect of the case.
2. During review proceedings the Plenary Chamber may make such orders for provisional measures as it thinks fit.
3. The Plenary Chamber shall decide any case in which it accepts a request for review. The provisions of Rules 55-61 shall apply mutatis mutandis.

*Rule 66*

*Finality and binding nature of decisions*

1. Decisions of the Chamber shall be final and binding in accordance with para. 3 of Article XI of the Agreement.
2. Decisions of Panels which are reviewable under Rule 63 shall become final and binding:
  - a) when the parties declare that they will not request review;
  - b) when the time limit referred to in Rule 63 para. 3 has expired without any request for review;
  - c) when a request for review has been refused under Rule 64.
3. When a Panel takes a decision which is reviewable under Rule 63 it may order such provisional measures as it thinks fit to protect the interests of the parties until the decision becomes final and binding under the preceding paragraph.
4. After a request for a review has been made the Plenary Chamber may make any such order for provisional measures and may revoke or vary any such order made by the Panel which took the decision under review.

**TITLE IV**

**RELATIONS OF THE CHAMBER WITH THE OFFICE OF THE OMBUDSPERSON**

*Rule 67*

*Links with the Office of the Ombudsperson*

The President of the Chamber shall maintain close links with the Office of the Ombudsperson.

*Rule 68*

*Procedural position of the Ombudsperson*

1. Where the Ombudsperson:
  - a) initiates proceedings on the basis of a Report in accordance with para. 7 of Article V of the Agreement; or
  - b) refers a case to the Chamber on behalf of an applicant under para. 1 of Article VIII of the Agreement, the provisions of these Rules relating to proceedings instituted by other parties shall apply mutatis mutandis as if the Ombudsperson were a party to the proceedings.
2. In the cases provided for by the first paragraph of this Rule under (a) the Ombudsperson shall be entitled to refer all or part of the issues raised by the original application to the Chamber for consideration.
3. In any case other than those provided for by the first paragraph of this Rule the Ombudsperson may intervene at any stage as an amicus curiae.
4. The Chamber may in any case request the assistance of the Ombudsperson as amicus curiae. It may in particular request such assistance through the exercise by the Ombudsperson of the investigative powers conferred by Article VI of the Agreement.

**FINAL TITLE**

*Rule 69*

*Amendment and suspension of these Rules*

1. Any rule may be amended upon motion made after notice when such motion is carried by the Plenary Chamber by an absolute majority of all the members of the Chamber. Notice of such motion shall be delivered in writing to the Registrar at least one month before the session where it is to be discussed. On receipt of such notice of motion the Registrar shall be required to inform all members of the Chamber at the earliest possible moment.
2. Any Rule may be suspended by the Chamber or a Panel upon motion made without notice, provided that this decision is taken unanimously. The suspension of a Rule shall in this case be limited in its operation to the particular purpose for which suspension has been sought.

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### *Rule 70 Notification of these Rules*

1. These Rules and any amendment to them shall, when adopted by the Plenary Chamber, be notified to the Parties to the Agreement, to the Secretaries General of the Council of Europe and the Organisation for Security and Co-operation in Europe and, while such office exists, to the High Representative referred to in Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina and to the Office of the Ombudsperson.
2. The Parties to the Agreement shall be requested to publish these Rules and any amendment to them in their Official Journals.

## **CASES IN CHRONOLOGICAL ORDER ACCORDING TO CASE NUMBER**

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| <b>CASE NO.</b>   | <b>NAME OF CASE</b>   |
|---|---|
| CH/96/1   | Matanović v. Republika Srpska   |
| CH/96/2, 4, 5, 6, 7, 11, 12, 13, 14, 19, 20, 24, 25, 26, CH/97/32, 33 | Podvorac, Momčilović, Riorović, Janjević, Vrančić, Galović, Alijagić, D. Đ., Fetahagić, B.K., Noković, Jovišević, Glušac, M.H., T.B. and J.S. v. State BiH and Federation BiH |
| CH/96/3,8, 9  | Medan, Bastijanović and Marković v. State BiH and Federation BiH  |
| CH/96/15  | Grgić v. Republika Srpska   |
| CH/96/17  | Blentić v. Republika Srpska   |
| CH/96/21  | Čegar v. Federation BiH   |
| CH/96/22  | Bulatović v. State BiH and Federation BiH   |
| CH/96/23  | Kalinčević v. State BiH and Federation BiH  |
| CH/96/27  | Bejdić v. Republika Srpska  |
| CH/96/28  | M.J. v. Republika Srpska  |
| CH/96/29  | Islamic Community in BiH v. Republika Srpska  |
| CH/96/30  | Damjanović v. Federation BiH  |
| CH/96/31  | Turčinović v. State BiH and Federation BiH  |
| CH/97/34  | Šljivo v. Republika Srpska  |
| CH/97/35  | Malić v. Federation BiH   |
| CH/97/40  | Galić v. Federation BiH   |
| CH/97/41  | Marčeta v. Federation BiH   |
| CH/97/42  | Eraković v. Federation BiH  |
| CH/97/45  | Hermas v. Federation BiH  |
| CH/97/46  | Kevešević v. Federation BiH   |
| CH/97/48, 52, 105, 108  | Poropat, Poropat, Šeremet, and Hrelja v. State BiH and Federation BiH   |
| CH/97/49  | Đurić v. Federation BiH   |
| CH/97/50  | Rajić v. Federation BiH   |
| CH/97/51  | Stanivuk v. Federation BiH  |
| CH/97/58  | Onić v. Federation BiH  |
| CH/97/59  | Rizvanović v. Federation BiH  |
| CH/97/60, CH/98/276, CH/98/287, CH/98/362, CH/99/1766                 | Miholić, Čorapović, Čirić, Ristić and Buzić v. State BiH and Federation BiH   |

*Cases in Chronological Order according to Case Number*

| <b>CASE NO.</b>  | <b>NAME OF CASE</b>  |
|--|--|
| CH/97/62   | Malčević v. Federation BiH   |
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| <b>Access to public service, right of</b> |  | <b>Arrest</b>   |   |
| discrimination                            | CH/01/7952   | deprivation of liberty on. <i>See</i> <b>Liberty and Security of Person, right to</b> |   |
| <b>Admissibility</b>                      |  | <b>Bail</b>   |   |
| domestic remedies,<br>compensation claim  | CH/99/2150   | pending trial, right to. <i>See</i> <b>Liberty and Security of Person, right to</b>   |   |
| manifestly ill-founded                    | CH/98/232 <i>et al.</i><br>CH/00/5480  | <b>Broadcasting license</b>   | CH/01/7248  |
| <i>lis alibi pendens</i>                  | CH/96/29<br>CH/98/575<br>CH/98/698<br>CH/98/756<br>CH/99/2030 <i>et al.</i>  | <b>Brčko District</b>   | CH/00/4116 <i>et al.</i>  |
| <i>ratione materiae</i>                   | CH/98/548<br>CH/98/638<br>CH/98/660<br>CH/98/934<br>CH/99/1568<br>CH/99/2150<br>CH/00/4295   | <b>Citizenship, <i>See</i> Immigration and asylum</b>                                 |   |
| <i>ratione temporis</i>                   | CH/96/29<br>CH/96/30<br>CH/97/67<br>CH/98/548<br>CH/00/5134 <i>et al.</i>  | <b>Correspondence</b>   |   |
| <i>ratione personae</i>                   | CH/96/29<br>CH/97/67<br>CH/97/76<br>CH/98/232 <i>et al.</i><br>CH/98/1027 <i>et al.</i><br>CH/99/2030 <i>et al.</i><br>CH/99/3071 <i>et al.</i><br>CH/00/5134 <i>et al.</i>  | interference with   | CH/00/3880  |
| <i>six-month rule</i>                     | CH/97/59<br>CH/98/706<br>CH/98/875<br>CH/98/896<br>CH/98/916<br>CH/98/1027 <i>et al.</i><br>CH/98/1373<br>CH/98/1786<br>CH/99/1900 <i>et al.</i><br>CH/99/3196<br>CH/01/6979 | <b>Death penalty</b>  |   |
|   |  | abolition of  | CH/96/30<br>CH/97/59<br>CH/97/69<br>CH/97/724   |
|   |  | deportation or extradition to<br>face   | CH/02/8679 <i>et al.</i>  |
|   |  | <b>Deportation</b>  | CH/02/8679 <i>et al.</i>  |
|   |  | <b>Detention</b>  |   |
|   |  | <i>incommunicado</i>  | CH/96/1<br>CH/99/3196<br>CH/00/3880   |
|   |  | reasonable length of  | CH/00/3880<br>CH/01/7488  |
|   |  | <i>See also under</i> <b>Liberty and Security of Person</b>                           |   |
| <b>Aliens</b>                             |  | <b>Disappearance,</b>   | CH/96/1<br>CH/96/15<br>CH/99/2150<br>CH/99/3196   |
| expulsion, arbitrary                      | CH/02/8679 <i>et al.</i>   | <b>Discrimination</b>   | CH/99/2425<br>CH/01/7952  |
| <b>Amicable resolution</b>                | CH/97/35<br>CH/97/46   | age   |   |
| <b>Amicus curiae</b>                      | CH/00/6558   | access to public service  | CH/98/1309 <i>et al.</i>  |
|   |  | employment  | CH/97/35<br>CH/97/50<br>CH/97/67<br>CH/98/948<br>CH/98/1018<br>CH/99/1714<br>CH/99/2696<br>CH/01/7351 |
|   |  | equal protection of the law   | CH/97/41  |

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|                                       | CH/97/76<br>CH/98/77<br>CH/98/756<br>CH/00/6436 <i>et al.</i><br>CH/00/6444 <i>et al.</i>   |  | CH/00/6134<br>CH/00/6436 <i>et al.</i><br>CH/00/6444 <i>et al.</i>            |
|                                       |   | private and family life                              | CH/98/892   |
| fair trial                            | CH/97/76<br>CH/97/77<br>CH/98/659 <i>et al.</i><br>CH/98/698<br>CH/98/752 <i>et al.</i><br>CH/98/756<br>CH/98/777<br>CH/98/948<br>CH/98/1124 <i>et al.</i><br>CH/98/1786  | religion, freedom of                                 | CH/96/29<br>CH/98/892<br>CH/98/1062<br>CH/99/2177<br>CH/99/2656<br>CH/00/4889 |
|                                       |   | remedy, effective                                    | CH/97/77<br>CH/98/756<br>CH/00/6436 <i>et al.</i>                             |
| forced or compulsory labour,          | CH/97/45<br>CH/98/896<br>CH/98/946  | torture and inhuman and<br>degrading treatment       | CH/97/45<br>CH/98/896<br>CH/98/946  |
| home, respect for                     | CH/97/46<br>CH/97/77<br>CH/98/659 <i>et al.</i><br>CH/98/698<br>CH/98/710 <i>et al.</i><br>CH/98/752 <i>et al.</i><br>CH/98/756<br>CH/98/777<br>CH/98/892<br>CH/98/1124 <i>et al.</i><br>CH/00/6436 <i>et al.</i>   |  | CH/98/1027 <i>et al.</i><br>CH/98/1373<br>CH/98/1786<br>CH/00/3880            |
|                                       |   | slavery and forced labour                            | CH/97/45<br>CH/98/896<br>CH/98/946  |
|                                       |   | social security                                      | CH/98/232 <i>et al.</i><br>CH/98/706 <i>et al.</i><br>CH/98/875 <i>et al.</i> |
| liberty and security of person        | CH/97/41<br>CH/97/45<br>CH/98/896<br>CH/98/946<br>CH/98/1027 <i>et al.</i><br>CH/98/1373<br>CH/98/1786<br>CH/00/6444 <i>et al.</i>  | work, right to                                       | CH/97/35<br>CH/97/50<br>CH/97/67<br>CH/98/1018<br>CH/99/2696<br>CH/01/7351    |
|                                       |   | <b>Employment</b>                                    |   |
| life, right to                        | CH/01/6979  |  | CH/97/35<br>CH/97/50  |
| movement, freedom of                  | CH/97/41  |  | CH/97/67<br>CH/98/1018<br>CH/99/2239<br>CH/99/2696<br>CH/01/7351              |
| possessions, peaceful<br>enjoyment of | CH/96/29<br>CH/97/46<br>CH/97/76<br>CH/97/60 <i>et al.</i><br>CH/97/77<br>CH/98/659 <i>et al.</i><br>CH/98/698<br>CH/98/706 <i>et al.</i><br>CH/98/752 <i>et al.</i><br>CH/98/756<br>CH/98/777<br>CH/98/896<br>CH/98/1062<br>CH/98/1124 <i>et al.</i><br>CH/99/2656<br>CH/00/4889 | <b>Exchange</b><br>contracts, See <b>Possessions</b> |   |
|                                       |   | prisoners  | CH/96/1<br>CH/96/15<br>CH/96/21<br>CH/96/45<br>CH/98/896<br>CH/98/946         |
|                                       |   | <b>Equal treatment before tribunals</b>              | CH/01/6979  |
|                                       |   | <b>Exhaustion of domestic</b>                        |   |

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| <b>Remedies</b>                                 | CH/96/21<br>CH/96/29<br>CH/97/58<br>CH/98/645<br>CH/98/659 <i>et al.</i><br>CH/98/1198<br>CH/00/3642   |                                       | CH/98/1324<br>CH/00/3880<br>CH/00/3880<br>CH/00/6558  |
|   |  | fair hearing                          | CH/97/34<br>CH/97/48 <i>et al.</i><br>CH/97/50<br>CH/98/1245<br>CH/98/1324<br>CH/98/1366<br>CH/98/1786<br>CH/98/548<br>CH/98/638<br>CH/98/659 <i>et al.</i><br>CH/98/934<br>CH/99/1859<br>CH/99/1951<br>CH/00/3642<br>CH/00/3880<br>CH/02/8679 <i>et al.</i>  |
| <b>Expression, freedom of</b>                   | CH/01/7248   |                                       |   |
| <b>Expropriation</b>                            | CH/97/42<br>CH/97/49<br>CH/97/58<br>CH/97/110<br>CH/98/394<br>CH/99/2425   |                                       |   |
| <b>Expulsion, See Extradition</b>               |  |                                       |   |
| <b>Extradition</b>                              | CH/02/8679 <i>et al.</i>   |                                       |   |
| <b>Fair trial, right to</b>                     |  |                                       |   |
| access to court, right of                       | CH/96/2 <i>et al.</i><br>CH/96/3 <i>et al.</i><br>CH/96/22<br>CH/96/23<br>CH/97/63 <i>et al.</i><br>CH/97/65<br>CH/97/81 <i>et al.</i><br>CH/97/82 <i>et al.</i><br>CH/97/104 <i>et al.</i><br>CH/98/129 <i>et al.</i><br>CH/98/159 <i>et al.</i><br>CH/98/174 <i>et al.</i><br>CH/98/697<br>CH/98/698<br>CH/98/710 <i>et al.</i><br>CH/98/752 <i>et al.</i><br>CH/98/777<br>CH/98/866<br>CH/98/1124 <i>et al.</i><br>CH/98/1195<br>CH/98/1309 <i>et al.</i><br>CH/99/1714<br>CH/00/4116 <i>et al.</i><br>CH/00/5134 <i>et al.</i><br>CH/00/6134<br>CH/00/6444 <i>et al.</i> | independent and impartial<br>tribunal | CH/97/51<br>CH/97/67<br>CH/97/77<br>CH/98/548<br>CH/98/756<br>CH/99/1951<br>CH/00/3642<br>CH/00/3880<br>CH/00/6558<br>CH/01/7248<br>CH/02/8679 <i>et al.</i>  |
|   |  | public hearing                        | CH/97/34<br>CH/98/1324<br>CH/01/7248  |
|   |  | reasonable time                       | CH/96/2 <i>et al.</i><br>CH/96/3 <i>et al.</i><br>CH/96/17<br>CH/96/22<br>CH/96/23<br>CH/96/27<br>CH/96/28<br>CH/97/48 <i>et al.</i><br>CH/97/49<br>CH/97/50<br>CH/97/51<br>CH/97/62<br>CH/97/63 <i>et al.</i><br>CH/97/65<br>CH/97/76<br>CH/97/77<br>CH/97/81 <i>et al.</i><br>CH/97/82 <i>et al.</i><br>CH/97/93<br>CH/97/104 <i>et al.</i><br>CH/97/110<br>CH/98/124 <i>et al.</i><br>CH/98/126 <i>et al.</i><br>CH/98/129 <i>et al.</i> |
| adequate time and facilities                    | CH/97/34<br>CH/98/1366   |                                       |   |
| defend oneself or legal<br>assistance, right to | CH/97/34<br>CH/98/934<br>CH/98/1366<br>CH/00/3880  |                                       |   |
| delay   | CH/98/1237<br>CH/00/4295   |                                       |   |
| equality of arms                                | CH/01/7488   |                                       |   |
| examination of witnesses                        | CH/98/1335 <i>et al.</i>   |                                       |   |

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|---|-------------------------|--|
|   | CH/98/159 <i>et al.</i> | CH/98/659 <i>et al.</i>  |
|   | CH/98/174 <i>et al.</i> | CH/98/697  |
|   | CH/98/271               | CH/98/698  |
|   | CH/98/367               | CH/98/710 <i>et al.</i>  |
|   | CH/98/457               | CH/98/752 <i>et al.</i>  |
|   | CH/98/617               | CH/98/756  |
|   | CH/98/603               | CH/98/764  |
|   | CH/98/660               | CH/98/777  |
|   | CH/98/688               | CH/98/800  |
|   | CH/98/724               | CH/98/814  |
|   | CH/98/756               | CH/98/834  |
|   | CH/98/774               | CH/98/866  |
|   | CH/98/1018              | CH/98/894  |
|   | CH/98/1019              | CH/98/916  |
|   | CH/98/1171              | CH/98/935  |
|   | CH/98/1221              | CH/98/958  |
|   | CH/98/1237              | CH/98/1066   |
|   | CH/99/1568              | CH/98/1124 <i>et al.</i>   |
|   | CH/99/1714              | CH/98/1195   |
|   | CH/99/1951              | CH/98/1198   |
|   | CH/99/2233              | CH/98/1232   |
|   | CH/99/2239              | CH/98/1495   |
|   | CH/99/2696              | CH/98/1785   |
|   | CH/99/3050              | CH/99/1961   |
|   | CH/00/3546              | CH/99/2233   |
|   | CH/00/3880              | CH/99/2425 <i>et al.</i>   |
|   | CH/00/4295              | CH/99/3071 <i>et al.</i>   |
|   | CH/01/7488              | CH/00/3546   |
|   | CH/01/8054              | CH/00/3708   |
|   |                         | CH/00/3733 <i>et al.</i>   |
|   |                         | CH/00/4116 <i>et al.</i>   |
|   |                         | CH/00/4566 <i>et al.</i>   |
|   |                         | CH/00/5408   |
|   |                         | CH/00/5480   |
|   |                         | CH/00/6134   |
|   |                         | CH/00/6142   |
|   |                         | CH/00/6143 <i>et al.</i>   |
|   |                         | CH/00/6144   |
|   |                         | CH/00/6258   |
|   |                         | CH/00/6436 <i>et al.</i>   |
|   |                         | CH/01/8054   |
| <b>Family life, see</b> Private and family life     |                         |  |
| <b>Forced or compulsory labour</b>                  | CH/97/45                |  |
|   | CH/98/896               |  |
|   | CH/98/946               |  |
| <b>Friendly settlement, see</b> Amicable resolution |                         |  |
| <b>Home, right to respect for</b>                   | CH/96/17                |  |
|   | CH/96/22                |  |
|   | CH/96/28                |  |
|   | CH/96/31                |  |
|   | CH/97/114               |  |
|   | CH/97/40                |  |
|   | CH/97/42                |  |
|   | CH/97/46                |  |
|   | CH/97/48 <i>et al.</i>  |  |
|   | CH/97/49                |  |
|   | CH/97/58                |  |
|   | CH/97/62                |  |
|   | CH/97/65                |  |
|   | CH/97/73                |  |
|   | CH/97/77                |  |
|   | CH/97/93                |  |
|   | CH/97/110               |  |
|   | CH/98/394               |  |
|   | CH/98/457               |  |
|   | CH/98/575               |  |
|   | CH/98/636               |  |
|   | CH/98/645               |  |
|   |                         | <b>ICTY, see</b> International Criminal Tribunal for the Former Yugoslavia |
|   |                         | <b>Immigration and asylum</b> CH/02/8679 <i>et al.</i>                     |
|   |                         | <b>Inhuman treatment, See Treatment, inhuman or degrading</b>              |
|   |                         | <b>Innocence, presumption of</b> CH/02/8679 <i>et al.</i>                  |
|   |                         | <b>International Criminal Tribunal for the Former Yugoslavia</b> CH/97/34  |
|   |                         | CH/97/41   |
|   |                         | CH/98/946  |
|   |                         | CH/98/1324   |
|   |                         | CH/98/1366   |
|   |                         | CH/98/1373   |
|   |                         | CH/98/1374   |

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|                                       | CH/01/7488               |  | CH/98/896                |
|                                       |                          |  | CH/98/946                |
|                                       |                          |  | CH/98/1324               |
| <b>JNA (Yugoslav National Army),</b>  |                          |  | CH/98/1335 <i>et al.</i> |
| See <b>Possessions</b>                |                          |  | CH/98/1366               |
|                                       |                          |  | CH/98/1373               |
| <b>Length of proceedings, see</b>     |                          |  | CH/98/1374               |
| <b>Fair trial, reasonable time</b>    |                          |  | CH/98/1786               |
|                                       |                          |  | CH/99/1900 <i>et al.</i> |
| <b>Liberty and security of person</b> |                          |  | CH/00/3880               |
|                                       |                          |  | CH/01/7488               |
| bail, right to                        | CH/00/3880               |  |                          |
|                                       | CH/01/7488               | Legality of detention, right to          |                          |
| compensation, right to                | CH/97/45                 | challenge. See <b>Habeus</b>             |                          |
|                                       | CH/98/896                | <b>Corpus</b>                            |                          |
|                                       | CH/98/946                |  |                          |
|                                       | CH/98/1027 <i>et al.</i> | <b>Life, right to</b>                    | CH/96/1                  |
|                                       |                          |  | CH/96/30                 |
| Disappearance, See also               | CH/96/1                  |  | CH/97/59                 |
| <b>Disappearance</b>                  |                          |  | CH/97/69                 |
|                                       | CH/96/15                 |  | CH/98/724                |
|                                       | CH/99/3196               |  | CH/99/3196               |
|                                       |                          |  | CH/01/6979               |
| <i>habeus corpus</i>                  | CH/96/21                 |  | CH/02/8679 <i>et al.</i> |
|                                       | CH/97/45                 |  |                          |
|                                       | CH/98/896                | <b>Media</b>                             | CH/01/7248               |
|                                       | CH/98/946                |  |                          |
|                                       | CH/98/1027 <i>et al.</i> | <b>Military trials</b>                   | CH/02/8679 <i>et al.</i> |
|                                       | CH/00/3880               |  |                          |
|                                       |                          | <b>Missing person, see Disappearance</b> |                          |
| promptly before a judge               | CH/96/21                 |  |                          |
|                                       | CH/97/34                 | <b>Movement, freedom of</b>              | CH/99/2425               |
|                                       | CH/97/45                 |  |                          |
|                                       | CH/98/896                | <b>Natural heritage asset</b>            | CH/00/5480               |
|                                       | CH/98/946                |  |                          |
|                                       | CH/98/1373               | <b>Ne bis in idem</b>                    | CH/98/1335 <i>et al.</i> |
|                                       | CH/01/7488               |  |                          |
| reason for arrest                     | CH/96/21                 | <b>Ombudsperson</b>                      | CH/96/1                  |
|                                       | CH/97/45                 |  | CH/96/35                 |
|                                       | CH/98/896                |  | CH/98/1066               |
|                                       | CH/98/946                |  | CH/98/1245               |
|                                       | CH/98/1027 <i>et al.</i> |  | CH/98/1374               |
|                                       | CH/98/1786               |  | CH/98/1786               |
| reasonable suspicion                  | CH/97/34                 |  | CH/99/1900 <i>et al.</i> |
|                                       | CH/98/1373               |  | CH/99/2030 <i>et al.</i> |
|                                       |                          |  | CH/00/3880               |
| rules of the road                     | CH/97/34                 | <b>Positive obligation, State</b>        | CH/02/8679 <i>et al.</i> |
|                                       | CH/97/41                 |  |                          |
|                                       | CH/98/946                | <b>Possessions</b>                       |                          |
|                                       | CH/98/1027 <i>et al.</i> | abandoned property                       | CH/96/23                 |
|                                       | CH/98/1324               | occupancy right                          | CH/96/28                 |
|                                       | CH/98/1335 <i>et al.</i> |  | CH/96/31                 |
|                                       | CH/98/1366               |  | CH/97/40                 |
|                                       | CH/98/1373               |  | CH/97/42                 |
|                                       | CH/98/1374               |  | CH/97/46                 |
|                                       | CH/01/7488               |  | CH/97/49                 |
|                                       |                          |  | CH/97/58                 |
| lawfulness of detention               | CH/96/15                 |  | CH/97/60 <i>et al.</i>   |
|                                       | CH/96/21                 |  |                          |
|                                       | CH/97/41                 |  |                          |
|                                       | CH/97/45                 |  |                          |

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|                                   | CH/97/62                 |                                 | CH/98/232 <i>et al.</i>  |
|                                   | CH/97/73                 |                                 | CH/98/706 <i>et al.</i>  |
|                                   | CH/97/93                 |                                 |                          |
|                                   | CH/97/114                | JNA property                    | CH/96/2 <i>et al.</i>    |
|                                   | CH/98/367                |                                 | CH/96/3 <i>et al.</i>    |
|                                   | CH/98/394                |                                 | CH/96/22                 |
|                                   | CH/98/457                |                                 | CH/96/23                 |
|                                   | CH/98/698                |                                 | CH/96/31                 |
|                                   | CH/98/704                |                                 | CH/97/40                 |
|                                   | CH/98/710                |                                 | CH/97/65                 |
|                                   | CH/98/866                |                                 | CH/97/70                 |
|                                   | CH/98/894                |                                 | CH/97/110                |
|                                   | CH/98/916                |                                 | CH/98/367                |
|                                   | CH/98/935                |                                 | CH/98/457                |
|                                   | CH/98/958                |                                 | CH/98/799                |
|                                   | CH/98/1066               |                                 | CH/99/2233               |
|                                   | CH/98/1495               |                                 | CH/97/60 <i>et al.</i>   |
|                                   | CH/99/1961               |                                 | CH/97/63 <i>et al.</i>   |
|                                   | CH/99/2030 <i>et al.</i> |                                 | CH/98/159 <i>et al.</i>  |
|                                   | CH/99/2233               |                                 | CH/98/174 <i>et al.</i>  |
|                                   | CH/00/3546               |                                 | CH/98/124 <i>et al.</i>  |
|                                   | CH/00/3733 <i>et al.</i> |                                 | CH/98/129 <i>et al.</i>  |
|                                   | CH/00/4566 <i>et al.</i> |                                 | CH/98/126 <i>et al.</i>  |
|                                   | CH/00/6258               |                                 | CH/97/81 <i>et al.</i>   |
|                                   | CH/00/5408               |                                 | CH/97/82 <i>et al.</i>   |
|                                   | CH/01/8054               |                                 |                          |
| bank account                      | CH/97/48 <i>et al.</i>   | Non-enforcement of court orders | CH/98/603                |
|                                   | CH/97/104 <i>et al.</i>  |                                 |                          |
|                                   | CH/98/1019               | Ownership, private              |                          |
|                                   | CH/99/1859               |                                 | CH/96/17                 |
| business premises                 | CH/97/51                 |                                 | CH/96/27                 |
|                                   | CH/98/575                |                                 | CH/96/65                 |
|                                   | CH/98/704                |                                 | CH/97/77                 |
|                                   | CH/98/800                |                                 | CH/97/110                |
|                                   | CH/99/1951               |                                 | CH/98/575                |
|                                   | CH/00/4295               |                                 | CH/98/659 <i>et al.</i>  |
| CRPC-decision, non-enforcement of |                          |                                 | CH/98/697                |
|                                   | CH/97/62                 |                                 | CH/98/752 <i>et al.</i>  |
|                                   | CH/97/73                 |                                 | CH/98/659 <i>et al.</i>  |
|                                   | CH/97/114                |                                 | CH/98/756                |
|                                   | CH/98/575                |                                 | CH/98/777                |
|                                   | CH/98/696                |                                 | CH/98/799                |
|                                   | CH/98/834                |                                 | CH/98/1124 <i>et al.</i> |
|                                   | CH/98/1066               |                                 | CH/98/1195               |
|                                   | CH/99/2030 <i>et al.</i> |                                 | CH/98/1237               |
|                                   | CH/99/3071 <i>et al.</i> |                                 | CH/99/2425 <i>et al.</i> |
|                                   | CH/00/3708               |                                 | CH/99/3071 <i>et al.</i> |
|                                   | CH/00/3733 <i>et al.</i> |                                 | CH/00/3546               |
|                                   | CH/00/4566 <i>et al.</i> |                                 | CH/00/4116 <i>et al.</i> |
|                                   | CH/00/6142               |                                 | CH/00/5408               |
|                                   | CH/00/6143 <i>et al.</i> | registration, of                | CH/00/6436 <i>et al.</i> |
|                                   | CH/00/6436 <i>et al.</i> |                                 | CH/00/6444 <i>et al.</i> |
|                                   | CH/00/6444 <i>et al.</i> |                                 | CH/98/1311               |
|                                   |                          |                                 | CH/018542                |
| eviction, illegal                 | CH/99/1951               | Personal property               | CH/96/21                 |
|                                   |                          |                                 | CH/98/896                |
| exchange contracts                | CH/97/70                 | Religious property              | CH/96/29                 |
|                                   | CH/98/1245               |                                 | CH/98/1062               |
| JNA pensions                      | CH/98/875 <i>et al.</i>  |                                 | CH/99/2656               |
|                                   |                          |                                 | CH/00/4889               |

|  |                          |  |                          |
|--|--------------------------|--|--------------------------|
| Shareholders   | CH/00/5134 <i>et al.</i> | <b>Treatment, inhuman or degrading</b> | CH/96/1                  |
| Tenancy contract   | CH/97/51                 |  | CH/97/34                 |
|  | CH/98/271                |  | CH/97/45                 |
|  | CH/98/636                |  | CH/98/896                |
|  | CH/98/710                |  | CH/98/946                |
|  | CH/98/800                |  | CH/98/1027 <i>et al.</i> |
|  | CH/98/814                |  | CH/98/1373               |
|  | CH/98/1195               |  | CH/98/1374               |
|  | Ch/98/1785               |  | CH/98/1786               |
|  |                          |  | CH/99/2150               |
| <b>Private and family life</b>                               | CH/98/892                |  | CH/99/3196               |
|  | CH/99/2150               |  | CH/00/3880               |
|  | CH/99/3196               |  | CH/02/8679 <i>et al.</i> |
|  | CH/00/3880               |  |                          |
|  | CH/00/5480               | <b>Work, right to, See Employment</b>  |                          |
|  | CH/02/8679 <i>et al.</i> |  |                          |
| <b>Proper investigation</b>                                  | CH/01/6979               |  |                          |
|  | CH/00/3642               |  |                          |
| <b>Psychiatric treatment</b>                                 | CH/00/3880               |  |                          |
|  | CH/01/6979               |  |                          |
| <b>Religion, freedom of</b>                                  | CH/96/29                 |  |                          |
|  | CH/98/892                |  |                          |
|  | CH/98/1062               |  |                          |
|  | CH/99/2656               |  |                          |
|  | CH/00/4889               |  |                          |
|  | CH/01/7488               |  |                          |
| <b>Remedy, effective</b>                                     | CH/97/40                 |  |                          |
|  | CH/97/45                 |  |                          |
|  | CH/98/636                |  |                          |
|  | CH/98/756                |  |                          |
|  | CH/98/814                |  |                          |
|  | CH/98/946                |  |                          |
|  | CH/98/1309 <i>et al.</i> |  |                          |
|  | CH/99/1961               |  |                          |
|  | CH/99/2150               |  |                          |
|  | CH/00/4889               |  |                          |
|  | CH/00/6444 <i>et al.</i> |  |                          |
| <b>Renewal of proceedings before the Chamber</b>             | CH/97/60 <i>et al.</i>   |  |                          |
| <b>Rules of the Road, See Liberty and security of person</b> |                          |  |                          |
| <b>Salary, payment of</b>                                    | CH/97/67                 |  |                          |
|  | CH/97/76                 |  |                          |
| <b>Shareholders</b>  | CH/00/5134 <i>et al.</i> |  |                          |
| <b>State violence, protection of</b>                         | CH/01/6979               |  |                          |
| <b>Terrorism, fight against</b>                              | CH/02/8679 <i>et al.</i> |  |                          |
| <b>Torture</b>   | CH/98/1027 <i>et al.</i> |  |                          |
|  | CH/00/3642               |  |                          |
|  | CH/02/8679 <i>et al.</i> |  |                          |