

HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA



DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

ANNUAL REPORT

(2001)

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* The Human Rights Chamber has published two companion volumes of the text of decisions issued in 2001.

I. INTRODUCTION

The year 2001 has been a productive one for the Human Rights Chamber. At the Chamber's 11 sessions held during the year, it issued 358 decisions of which 31 were substantive decisions on admissibility and merits and 3 were decisions on review. The cases decided related to property matters, employment discrimination, religious discrimination, length of proceedings, non-enforcement of court decisions, fair trial, expropriation, missing persons and ill-treatment in detention. Seven public hearings, at which witnesses were heard and evidence was presented, were held in 8 cases involving almost 100 applicants. Fewer applications were registered than in the previous year, but still, on average, the Chamber received 150 applications every month.

The backlog of cases has been steadily rising so that at the end of 2001, the number of registered applications had reached 8,481. That number dramatically increased during the first 4 months of 2002 so that by the end of April the number of applications stood at 10,390. On average, the Chamber issues about 35 decisions at each of its monthly week-long sessions. Unfortunately, the huge gap between applications received and decisions issued each month is not possible to bridge with current resources. But the statistics do not reflect truly the reality of the situation. Several thousands of applications are likely destined for a "standard" strike-out or inadmissibility decision either because the matter already has been resolved e.g., due to progress in the refugee return process, because the Chamber has stated the law in a lead decision addressing the same issue, because of a clear failure to exhaust effective domestic remedies or because the application is manifestly ill-founded. Rather than invest scarce resources in deciding these cases, however, the Chamber has made a conscious decision to prioritize cases alleging discrimination and other severe violations of human rights such as unlawful detention or violations of the principle of fair trial, as well as cases which can serve as a precedent or are particularly important for the promotion of the rule of law in Bosnia and Herzegovina.

The high number of applications to the Chamber are a consequence of several factors: domestic courts are perceived as inefficient and not impartial when dealing with cases involving persons not belonging to the majority group; the Chamber is recognised as an efficient and impartial tribunal whose orders are complied with, albeit under pressure from the international community; and no cost is involved, such as lawyers' fees and court expenses to file an application with the Chamber. The reality is that until the ongoing reform of the judiciary finally takes hold, the Chamber will continue to be perceived as the ultimate guarantor of impartial and independent adjudication of human rights violations.

The year 2001 has been particularly difficult for the judicial system of the Federation: the Constitutional Court of the Federation did not function during most of the year and the Supreme Court lost half its members during the last four months of the year. Relations between the Chamber and the Federation were particularly difficult towards the latter part of the year. The agent of the Federation was strongly critical of certain decisions of the Chamber in the media, trying thus to draw it into the domestic political arena. This kind of behaviour from a part of the executive branch is very unusual in democratic societies and is another indication of the pressing need to strengthen the judicial institutions.

The international community has been largely responsible for the progress made in the authorities' compliance rate over the years as no enforcement mechanism to ensure compliance with the Chamber's decisions exists in Annex 6 to the Dayton Peace Agreement. The Federation has continued its trend towards full compliance, although some specific orders are still ignored. The Republika Srpska still executes the Chamber's decisions with great difficulty and mostly under international pressure. Compliance by the State, which was ordered to undertake positive actions in only a few cases due to its limited competence, is non-existent.

Financially, the Chamber has been able to function due mainly to contributions from the international community, as in all previous years. The State, despite its obligation under Annex 6, was unable to spare more than 100,000 KM during the whole year to support the Chamber.

The Chamber's mandate is set to expire at the end of 2003. With this in mind, the Chamber will concentrate its resources on ensuring that the remaining cases it solves will have the greatest impact on the protection of human rights in Bosnia and Herzegovina.

II. MEMBERS AND STAFF OF THE CHAMBER

A. MEMBERS OF THE CHAMBER

The Human Rights Chamber is composed of 14 members as provided in Article VII of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina (Annex A). Four members were appointed by the Federation of Bosnia and Herzegovina and two by the Republika Srpska. The remaining eight members are internationals and were appointed by the Committee of Ministers of the Council of Europe. Pursuant to Annex 6, the international members are not citizens of Bosnia and Herzegovina or any neighbouring state. The President of the Chamber, Ms. Michèle Picard, a French national, was designated by the Committee of Ministers of the Council of Europe from among the international members. The members appointed are all distinguished lawyers and bring to the Chamber a wide variety of experience in different backgrounds including the judiciary, the academic sphere, private legal practice, administration and politics, and international, criminal and human rights law. A list of the members and their short biographies are attached to this Report as Annex B.

B. SECRETARIAT OF THE CHAMBER

The Secretariat is the full-time staff of the Chamber, based in Sarajevo with an additional office in Banja Luka. The Secretariat staff remained at about 34 during the year, with approximately 8 internationals employed at any one time including the Executive Officer, Registrar and several lawyers who work in teams with national lawyers. The Chamber also started an intern program in 2001 for national law students who work in both the Sarajevo and Banja Luka offices. A list of the staff of the Secretariat is attached to this Report as Annex C.

The Chamber continues to rely almost exclusively on direct funding from individual governments to cover the salaries of international staff. In 2001, the United States, German and Netherlands Governments provided funding for international staff. Other governments have been encouraged to second lawyers without success. In previous years, the Council of Europe seconded a Registrar to the Chamber from the staff of the European Court of Human Rights and subsidized the cost. This arrangement ceased in September 2001 and the Chamber hired a Registrar directly, choosing a lawyer who had previously worked at the Chamber. During 2001, interns from Germany, the United States and Bosnia and Herzegovina contributed to the work of the Chamber.

The Human Rights Chamber is provided office space by the State of Bosnia and Herzegovina in the Presidency Building in Sarajevo. In May 2001, the Chamber moved into 5 recently-vacated adjoining rooms alleviating somewhat the severely cramped conditions in which the staff had been working. But more office space still is needed to accommodate new staff, especially lawyers and translators, to deal with the ever-increasing number of newly registered applications. The Chamber meets in session in the Presidency Building in a room that it shares with the Constitutional Court of Bosnia and Herzegovina. Public hearings are held at the Sarajevo Cantonal Court. The Chamber rents private space for its office in Banja Luka.

III. MANDATE AND JURISDICTION OF THE CHAMBER

The mandate of the Human Rights Chamber is set out in Article II of Annex 6 to the Dayton Peace Agreement. The Chamber has the mandate to consider 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, and alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the Convention and 15 other international agreements listed in the Appendix to Annex 6. The Chamber may only receive applications concerning matters which are within the responsibility of one of the Parties to Annex 6 (the State of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska), and which occurred or continued after entry into force of the Dayton Peace

Agreement (14 December 1995). Particular priority is given to allegations of especially severe or systematic violations, as well as those founded on alleged discrimination on prohibited grounds.

The Chamber may receive applications concerning such human rights violations directly from any Party to Annex 6 to the Dayton Peace Agreement or from any 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.

Under the terms of Annex 6, when the Chamber receives an application it must decide whether to accept or reject it, taking into account a number of criteria listed in Article VIII. These criteria include: (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 (the Chamber or the BiH Ombudsman) within six months from such date on which the final decision was taken; (b) whether the application is substantially the same as a matter that the Chamber has already examined; (c) whether the application is incompatible with the Human Rights Agreement, manifestly ill-founded, or an abuse of the right of petition; and (d) whether the application concerns a matter currently pending before another international human rights body or another Commission established by the Dayton Peace Agreement.

The Chamber's procedures are modeled on those of the European Court of Human Rights. Unless the Chamber decides at the outset that an application is inadmissible or should be struck out, written observations are requested from the applicant and respondent Party, after which the Chamber deliberates and decides on a case. In addition to the written procedure, the Chamber may decide to schedule a public hearing for oral argument by the parties and submission of evidence by witnesses and experts. The Chamber may also invite written or oral *amicus curiae* submissions. If the Chamber finds a violation, it may, in its written decision on the merits, issue an order indicating the steps that the respondent Party must take to remedy the breach, including orders to cease and desist or grant monetary relief. At any stage of the proceedings, it may also order provisional measures or attempt to facilitate an amicable resolution based on respect for human rights. The decisions of the Chamber are final and binding and the respondent Parties are obligated to implement them fully. Chamber decisions on the merits are forwarded to the Office of the High Representative (OHR) and the Organisation for Security and Co-operation in Europe (OSCE) for monitoring of compliance.

IV. THE CHAMBER'S RULES OF PROCEDURE

Annex 6 provides that the Chamber "shall develop fair and effective procedures for the adjudication of applications" and that 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" (Article X, para. 1). Initially, the Chamber decided its procedure *ad hoc*, and on the basis of provisional Rules of Procedure adopted in July 1996, in line with the principles set forth in the Dayton Peace Agreement. The Chamber's Rules of Procedure (attached to this Report as Annex D), adopted in December 1996 and modified in May and September 1998 and again in March 2001, are intended to give effect to those principles. They are modeled to a large extent on the rules of procedure of the former European Commission and Court of Human Rights, although substantial adjustments have been made to accommodate the special composition and circumstances of the Chamber.

The Rules provide for a combination of written and oral procedure and for consideration of issues of both admissibility and merits. The Rules also provide for, among other matters, the giving of priority to particular applications, provisional measures, procedures at hearings, amicable resolutions, the award of monetary relief and proceedings for review by the plenary Chamber of decisions of the panels. There are a number of possible outcomes to proceedings before the Chamber, such as a decision rejecting the application as inadmissible, a friendly settlement of the case, a decision to strike the application off the case list, or a decision on the merits. The Chamber's decisions on the merits and decisions on review are delivered at public hearings.

V. CASELOAD OF THE CHAMBER

During the year 1,803 applications were registered which brought the total number of applications registered at the Chamber to 8,481 by the end of 2001. On average, then, the Chamber received more than 150 applications alleging human rights violations every month during 2001. Through the end of 2001, the Chamber has issued a total of 1,031 decisions resolving about 1,280 applications. (One decision may resolve more than one individual application, as the Chamber has the discretion to join cases if appropriate). That left about 7,200 applications pending before the Chamber by the end of 2001. At the beginning of 2002, the number of applications received rose dramatically. In the first 4 months, 1,909 applications were registered for an average of 477 each month.

In 2001, the Chamber held a total of 11 plenary sessions and 11 sessions of each of its two panels in Sarajevo (no session is held during August). During its sessions, the Chamber considers the cases before it, both in private deliberations and public hearings. A total of 358 final and binding decisions were issued at these sessions in 2001 which included decisions on admissibility, merits, strike-outs, requests for review and decisions on review resolving around 400 individual applications. On average, then, the Chamber adopted and/or delivered about 35 decisions at each of its sessions.

Decisions on admissibility and merits and decisions on review are publicly delivered each month after they are adopted (parts of the decisions are read out at a public hearing) while all other types of decisions are adopted, but not publicly delivered. Among the 358 decisions issued in 2001, 31 were decisions on admissibility and merits and 3 decisions on review. The decisions on admissibility and merits concerned issues including property matters, employment discrimination, length of proceedings, non-enforcement of court decisions, fair trial, expropriation, missing persons, ill-treatment in detention and religious discrimination. In addition to adopting and delivering decisions each session, the judges also deliberated on hundreds of other cases in various stages of procedure throughout the year. Hundreds of requests for provisional measures were also considered.

The Chamber held 7 public hearings in 2001 during which testimony was heard and evidence received in 8 cases pending before the Chamber involving a total of almost 100 applicants. The issues concerned property rights, fair trial, ill-treatment in custody, private and family life, discrimination, and peaceful enjoyment of possessions encompassing agricultural land, apartments and shares of a company. As of April 2002, the Chamber had issued decisions in all of the cases in which there had been a public hearing.

The chart below illustrates the increase in applications received and decisions taken over a period of 6 years. Annex E attached to this Report provides a statistical summary of the types and numbers of decisions taken by the Chamber through 2001.

Year	Number of applications registered	Number of decisions adopted and delivered
1996	31	0
1997	83	19
1998	1,382	67
1999	1,953	206
2000	3,226	381
2001	1,803	358
Total as of 31 December 2001	8,481	1,031 (resolving 1,280 applications)

VI. STRATEGIES FOR DEALING WITH THE CASELOAD

The Chamber has considered various strategies and procedures for dealing efficiently with its huge caseload and developed several "model" decisions for use in certain types of cases. Scarce resources, especially in terms of staffing and office space, has meant that these strategies, procedures and mechanisms for dealing with its caseload can only be partially implemented. Moreover, other important considerations relating to the purpose and legal mandate of the Chamber and its role in contributing to the rule of law in Bosnia and Herzegovina have influenced the Chamber's strategic approach.

According to Article VIII(2)(e) of Annex 6 to the Dayton Peace Agreement, "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".

In pursuance of this principle set forth in its founding instrument, the Chamber has adopted the following informal guidelines in addressing its caseload:

- priority is given to allegations of particularly severe violations of human rights, such as violations of the right to life, unlawful detention, disappearances, serious violations of the principle of fair trial;
- priority is given to allegations of discrimination;
- moreover, although not expressly mentioned in Article VIII(2)(e), the Chamber gives priority to applications which either
 - (a) raise novel legal issues of particular relevance for Bosnia and Herzegovina, so that the Chamber's decision can serve as a precedent or guideline for domestic decision-makers, both for administrative authorities and in the courts; or
 - (b) are particularly important for the promotion of the rule of law in Bosnia and Herzegovina.

A. SYSTEMATIC VIOLATIONS OF HUMAN RIGHTS

As to the mandate to give priority to allegations of systematic violations of human rights, the Chamber has noted that most of the cases it deals with are individual instances of systematic (at least in the sense of widespread) violations of human rights. This is, e.g., the case of obstruction of the refugee return process resulting in violations of the right to respect for a person's home and property, the freezing of foreign currency bank accounts, employment discrimination, disappearance of persons, and systematic failure of courts to decide within a reasonable time cases brought by members of minorities. These types of cases account for approximately two-thirds of the applications registered with the Chamber. With regard to these systematic violations of human rights, the Chamber sees its role as deciding "lead cases" or precedent-setting cases, which provide domestic and international decision-makers with the principles to be applied in order to address the remaining cases sharing the same fact pattern. As a result of the Chamber's decision in lead cases, legislation giving rise to the human rights violations complained of has been amended both with regard to JNA apartments and with regard to frozen foreign currency accounts.

B. CATEGORIES OF CASES THAT POSSIBLY QUALIFY FOR "STANDARDIZED" DECISIONS

■ *Striking out solved cases, particularly repossession of pre-war apartments and houses*

Under Article VIII(3) of the Annex 6 Human Rights Agreement, the Chamber may strike out an application from its case list when "the matter has been resolved" and it is compatible with respect for human rights not to further pursue consideration of the matter. Approximately 3,000 applications pending before the Chamber concern reinstatement into possession of an apartment or house. Due to the slowly but constantly growing rate of property law implementation in Bosnia and Herzegovina, many cases of the Chamber's back-log probably are destined for a strike-out decision, because the applicant has regained possession of her/his apartment, or, in the cases concerning the former JNA apartments, has been able to register as owner of the apartment.

The Chamber issues strike-out decisions when it receives a letter from an applicant informing it that he/she has been reinstated. As of 31 December 2001, 297 strike-out decisions had been issued, most of them concerning return to pre-war homes.

Finally, and most importantly, the Chamber is taking a pro-active approach towards identifying cases in which the applicant has repossessed his or her pre-war dwelling. This involves setting up a procedure for the purpose of exchanging information with the CRPC re-possession database. Again, this new strategy will likely lead to the identification of numerous solved cases.

■ *Model decisions in frozen foreign currency account cases*

About 2,000 "frozen foreign currency account cases" have been lodged with the Chamber. In May 2000 the Chamber delivered its decision in the first four of these cases. In order to comply with the Chamber's remedial orders issued in that decision, the government and legislature of the Federation of Bosnia and Herzegovina have amended the relevant legislation. The Chamber is considering around 30 additional "frozen foreign currency account cases". It will in the process assess whether, as a result of the changes to the legislation, there is still an excessive burden on the individual foreign currency account holders, constituting a violation of their right to peaceful enjoyment of possessions. Should the Chamber find that there is no longer any violation, it might be possible to develop a model decision to declare the remaining frozen foreign currency account cases inadmissible.

Analogously, if the Chamber was to find that, even after the changes to the legislation, there still is a violation of the applicants' right to peaceful enjoyment of their possessions, the Chamber would probably order a remedy which, while formally concerning only the applications decided on, would in substance concern all the 2,000 frozen bank account applicants.

■ *Model decisions in CRPC decision implementation cases*

The Chamber has developed a model decision on admissibility and merits for cases concerning the failure of the housing authorities to implement decisions of the Annex 7 Commission for Real Property Claims of Refugees and Displaced Persons (CRPC). While the model decision enables the Chamber to (relatively) expeditiously decide groups of such cases, other reasons advise against it. These reasons are connected to the explicit and mandatory introduction of the "chronological order" requirement for the reinstatement process in the new property law implementation legislation, imposed by the High Representative in December 2001. In issuing such decisions, - if issued in the streamlined procedure - the implementation of the Chamber's decisions within the deadlines set by the Chamber risks being at odds with the respect of the statutory chronological order requirement. This illustrates a circumstance in which an approach to the Chamber's caseload aiming at the expeditious decision of as many cases as possible might prove counterproductive when viewed within the larger context.

■ *Model decisions on admissibility and to strike out*

The Chamber has developed model decisions for standard inadmissibility and strike-out decisions, which significantly expedite the drafting process in standard situations. These model decisions concern, e.g., cases that are outside the Chamber's competence *ratione temporis*, where the applicant has failed to exhaust domestic remedies, where the applicant asks the Chamber to act as an additional appeals instance to the domestic judicial system, or cases in which the applicant complains about his/her eviction from an apartment he/she has to vacate in order to allow the return of the pre-war occupant.

■ *Applications with a clear failure to exhaust domestic remedies*

The Chamber has at all times received a great amount of cases in which applicants file an application to the Chamber without awaiting a final decision in their case by the domestic authorities, administrative and judicial. Under Article VIII(2)(a) of the

Human Rights Agreement, applicants are required to exhaust effective domestic remedies before applying to the Chamber. The Chamber has in its case law stressed the requirement that the remedies available be effective, and has considered on the merits many applications in which domestic remedies had not formally been exhausted, because the prospect of their providing relief to the applicants' well-founded complaints was dim.

However, the Chamber receives a significant number of applications in which the applicants completely disregard the existence of a domestic court system competent to deal with their grievances, or address the Chamber more or less at the same time as they initiate proceedings before domestic authorities. In most of these cases, there is *prima facie* no reason to doubt that the domestic remedy could be effective. These applications therefore appear to be clearly inadmissible.

The Chamber could increase the number of decisions issued by identifying these cases and declaring them inadmissible, particularly so if it had more national lawyers. However, it may be questioned whether the Chamber's resources are well-invested in issuing numerous decisions rejecting clearly inadmissible applications. The argument could be made that an increased number of such inadmissibility decisions could discourage future applications of the same abusive kind. However:

- (a) most applicants are not represented by lawyers, and therefore not aware of admissibility requirements; and
- (b) filing an application with the Chamber does not involve any costs, while lawyers' fees and court expenses are for many persons an obstacle to litigation before domestic courts. They are therefore not easily discouraged from filing applications with the Chamber instead of the domestic court system.

C. BALANCING QUANTITY OF DECIDED CASES V. IMPACT OF DECISIONS

The Chamber's output, in numerical terms, could probably be increased by allocating a greater portion of its scarce resources (i.e. lawyer and translator working hours) to the issuance of decisions in strike-out cases, cases permitting the drafting of standardized decisions, and clearly inadmissible cases. However, by pursuing such a "quantity-oriented" approach, the Chamber would be mostly deciding cases which either are already decided from a substantive point of view (because the matter is solved in fact, or because the Chamber has stated the law in a lead decision addressing the same issue, thereby substantially deciding the other identical cases), or which do not even come close to revealing a violation of the Human Rights Agreement.

The Chamber is currently primarily allocating its resources to deciding:

- (a) cases involving requests for provisional measures, which by their nature have to be dealt with urgently; and
- (b) cases involving allegations of particularly serious violations of human rights and discrimination, and cases raising new legal issues, where the Chamber's decision can function as a precedent for domestic courts, and, finally, other cases which promise to have a particular impact on the rule of law in Bosnia and Herzegovina.

It is fair to say that the overall procedure (written proceedings involving the parties, possibly oral hearing, legal research of both domestic and international law, drafting of memoranda and decisions, deliberations of the judges) in deciding one admissibility and merits case on average involves the same amount of resources (lawyers', translators' and judges' time) required to decide perhaps 40 or 50 of the applications that could be solved by a standardized decision.

Nonetheless, the Chamber's impact on respect for human rights and the rule of law in Bosnia and Herzegovina is secured primarily by these "big", resource-intensive decisions, and not by the fifteen to thirty inadmissibility and strike-out decisions the Chamber issues every month.

It is therefore necessary for the Chamber to balance two conflicting necessities: on the one hand, to solve the important cases it is mandated to give priority to, novel cases that will set precedents or cases that are of particular importance for the rule of law in Bosnia and Herzegovina, and, on the other hand, to decide as many of the "smaller", "standard", strike-out and inadmissible cases as possible, in order to limit the uncontrolled growth of its backlog of unsolved cases.

D. LIMITATIONS ON STREAMLINING

It is worth mentioning that the Chamber is considering the legal feasibility of more radical measures for the streamlining of its procedures, which would touch the very core of the judicial process before the Chamber, e.g., introducing a judge rapporteur system, or small panels for standard inadmissibility and strike-out decisions (possibly composed only of domestic judges). However, the provisions of Annex 6 place severe limitations on the legal possibility to validly change proceedings before the Chamber in these respects. Moreover, it is open to doubt whether these changes would actually increase the Chamber's ability to solve substantially more cases than it is now solving.

VII. COOPERATION WITH OTHER INSTITUTIONS

■ *Office of the High Representative (OHR)*

Since 1997, the OHR has designated a position within its Human Rights and Rule of Law Department of Human Rights Institutions Coordinator. This has greatly facilitated cooperative relations between the Chamber and OHR. Cooperation has extended to such issues as securing funding for the Chamber, ensuring compliance by national authorities with the Chamber's decisions and furthering relations between the Chamber and the agents of the respondent Parties. Especially with respect to the implementation of the Chamber's decisions, the OHR continued to take an active role during 2001, intervening with the national authorities when necessary, in an effort to secure compliance. Towards the latter part of 2000, the OHR was successful in securing agreement among the three signatories to Annex 6 to the Dayton Peace Agreement to extend the mandate of the Human Rights Chamber for an additional three years, through 31 December 2003.

■ *Organisation for Security and Co-operation in Europe (OSCE)*

The OSCE continued throughout the year to actively provide institutional support to the Chamber. Coordinated through the Human Rights Department of the mission in Sarajevo, OSCE field officers continue to play an active role in distributing information about the Chamber and its decisions throughout the country, providing information to the Chamber on specific cases and referring potential applicants to the Chamber. When provisional measures are ordered, the field officers, sometimes on extremely short notice, undertake efforts to monitor compliance by the relevant local authorities. During 2001, the OSCE also took the initiative in a number of cases to press the issue with national authorities of compliance with Chamber decisions. Regular meetings between Chamber staff and OSCE experts on property issues have facilitated an exchange of views on complex questions of law.

■ *Commission for Real Property Claims of Displaced Persons and Refugees (CRPC)*

The staff of the Chamber and the CRPC meet regularly to discuss issues - both legal and procedural - of mutual interest and concern. The Chamber also requests from the CRPC on a regular basis, in relation to its cases, data regarding issuance of CRPC decisions and actual repossession. In April 2002, the Chamber concluded an MoU with the CRPC providing for the exchange of data covering cases of repossession of property by returnees. This process is facilitating the identification of solved cases.

■ *United Nations Mission in Bosnia and Herzegovina (UNMIBH)*

The United Nations Mission in Bosnia and Herzegovina, particularly the UN International Police Task Force (IPTF), has been actively engaged in efforts to secure compliance by the Republika Srpska with the Chamber's first decision ever delivered - *Matanović v. the Republika Srpska* - and with a more recent decision - *Avdo and Esma Palić v. the Republika Srpska* - delivered in January 2001. In *Matanović*, the Chamber ordered the Republika Srpska to undertake an investigation into the disappearance in September 1995 of a priest and his parents. Evidence had been presented in the case that indicated that they were in the custody of authorities of the Republika Srpska after the entry into force of the Dayton Peace Agreement. In

Palić, the Chamber ordered the Republika Srpska to undertake an investigation into the disappearance of a military commander of the Army of the Republic of Bosnia and Herzegovina while he was negotiating for the evacuation of civilians from the Žepa enclave in July 1995. As in *Matanović*, evidence indicated that he was in the custody of authorities of the Republika Srpska after entry into force of the Dayton Peace Agreement. The Chamber also ordered the Republika Srpska to pay compensation to Ms. Palić which they did after the OHR exerted strong pressure on the responsible authorities to do so. Unfortunately, successive governments in the Republika Srpska have been unwilling to undertake a thorough investigation into either case and they both remain substantially in noncompliance. Due mainly to the perseverance of the IPTF, and despite the passage of time and other obstacles, the bodies of the Matanović's were discovered in a well in September 2001 and ultimately buried in a cemetery. The IPTF had earlier, in May 2001, deauthorised 3 Prijedor police officers for their involvement in the *Matanović* case. The Republika Srpska authorities have yet to take steps towards an investigation into the *Palić* case.

■ *Constitutional Court of Bosnia and Herzegovina*

The Chamber and the Constitutional Court cooperate in the exchange of information with respect to cases under their respective consideration to ensure that the same case is not brought before both courts. The staff of the Chamber and the Constitutional Court also continue to meet regularly to discuss other legal and procedural issues of mutual interest and concern.

■ *Human Rights Ombudsman of Bosnia and Herzegovina*

Since 3 January 2001, the BiH Ombudsman has been governed by the Law on the Human Rights Ombudsman of Bosnia and Herzegovina imposed by the High Representative. The Chamber raised the issue that this new Law may have implications for the institutional relationship between the Chamber and the BiH Ombudsman and that such potential change had not been properly considered prior to its imposition. Previously, both institutions derived their mandate from Annex 6 to the Dayton Peace Agreement and together comprised the Commission on Human Rights. Procedural rules governing the relationship between the two institutions are contained in Annex 6 and the question arose as to whether these rules are still applicable. While the full effect of the new Law on the interaction between the two institutions still has yet to be fully evaluated, some procedural changes did result. For example, the BiH Ombudsman no longer refers cases to the Chamber or participates in the Chamber's proceedings as provided for in Annex 6. Whether this is a consequence of the new Law or internal policy of the Ombudsman remains to be seen. It also is not clear whether the 6-month rule contained in Annex 6 - which regulates the time-limit within which applicants must file an application to either the Chamber or the Ombudsman collectively referred to as the Commission on Human Rights - is now applicable only to the Chamber. Uncertainty over which procedural provisions apply is confusing for applicants and leaves issues open to a new interpretation. On a professional level, relations between the two institutions continue to be conducted in a spirit of cooperation.

■ *Council of Europe*

The Chamber publishes compilations of the full text of its decisions on admissibility and merits and a selection of admissibility decisions in English and the national language every 6 months. With the assistance of the Council of Europe, these decision volumes are distributed throughout Bosnia and Herzegovina to judges, lawyers and prosecutors, international organisations, national ministries, embassies, international and national NGOs and other interested institutions. In this way, the Chamber's body of case law fulfills an educational role regarding application in Bosnia and Herzegovina of the European Convention on Human Rights and other international instruments and the development of the rule of law.

VIII. RELATIONS WITH THE RESPONDENT PARTIES

Cooperation with the respondent Parties -- the Federation of Bosnia and Herzegovina, the Republika Srpska and the State of Bosnia and Herzegovina -- is conducted almost exclusively through appointed agents who represent the Parties in proceedings before the Human Rights Chamber. The agents are given notice by the Chamber of applications against the Party they represent and are invited to submit their observations in writing on the admissibility and merits of the applications. Agents are also invited to appear at public hearings and to present oral argument. If the Chamber finds a violation of human rights in a decision on the merits, it may order the respondent Party or Parties against which the decision was taken to take remedial measures and/or pay compensation. The agents are responsible for informing the respondent Parties of the Chamber's decisions and their obligation to implement fully the orders of the Chamber and for reporting to the Chamber on the steps taken by them to implement the decisions.

■ *The Federation of Bosnia and Herzegovina*

The agent of the Federation of Bosnia and Herzegovina continued throughout 2001 with the same efficient procedures for carrying out her responsibilities towards the Chamber established in previous years. Communication between the Chamber and the Federation agent generally was very good during the year which helped to facilitate the work of the Chamber. However, towards the latter part of the year, the Federation agent appeared almost daily on television and was very often quoted in the print media criticizing several decisions of the Chamber and suggesting that they were politically motivated. It was even stated that certain decisions would not be implemented. However, it was never clarified whether these statements expressed the view of the Federation government or the personal view of the Federation agent. With respect to compliance with the Chamber's decisions in general the Federation's record was good in 2001, although some individual decisions still remain in non-compliance. In March 2002, the agent of the Federation was removed from office and a replacement appointed. It remains to be seen how the relationship between the Chamber and the new agent will develop.

■ *The Republika Srpska*

Cooperation between the agent of the Republika Srpska and the Chamber was fair during 2001. Responses to requests for written observations on transmitted cases were limited. Compliance with orders of the Chamber appeared to be random and in almost every case long after the deadline given for compliance expired. Many applicants who have received a decision by the Chamber in their favor are still waiting to be reinstated and many other decisions remain in non-compliance.

■ *The State of Bosnia and Herzegovina*

Three agents represent the State of Bosnia and Herzegovina in proceedings before the Chamber. However, written communication and representation at public hearings continues to be conducted by only two of the three agents. The State's record of compliance with Chamber decisions is non-existent. The State has been ordered by the Chamber to undertake positive actions to remedy violations of human rights of which it was found to be responsible in four decisions involving 16 applicants. There has been no compliance with any of the orders with respect to any of the applicants.

IX. CASES BEFORE THE CHAMBER IN 2001

This section of the Report is intended to provide a broad picture of the Chamber's work during the year, and to highlight some of the main developments in its case-law. A list of all the decisions taken by the Chamber during the year, on the admissibility or merits, requests for review, striking out of cases and decisions on review, is attached to this Report as Annex F. Summaries of a selection of decisions dealing with the merits of cases are attached as Annex G. The full texts of all decisions on the merits, and a selection of decisions on admissibility, are included in the two companion volumes of decisions (January - June 2001 and July - December 2001). Copies of the Chamber's decisions are available from the Secretariat on request.

1. Provisional Measures

Article X, para. 1, of Annex 6 empowers the Chamber to order provisional measures. This can be done at any stage of the proceedings. Generally speaking the Chamber will only order a provisional measure where there is a *prima facie* indication that a protected right has been infringed, or is threatened with infringement, and it appears likely that the applicant will suffer serious or irreparable harm if an order is not made. Such orders are most frequently used to preserve the *status quo* pending the Chamber's determination of a case and are legally binding. The Chamber also has specific power under Article XI, para. 1 (b) of Annex 6 to include an order for provisional measures in its final decision on the merits of a case. This power can be used to regulate the position of the parties before a decision becomes final and binding, or pending the full implementation of a decision.

During the year the Chamber has continued to receive substantial numbers of requests for provisional orders, particularly in housing cases where the applicant is threatened with eviction. Following changes in the housing laws, including in particular the repeal of abandoned property legislation, the majority of such requests have been refused. Many such requests relate to evictions lawfully ordered to enable the pre-war occupant of property to return. In such cases a provisional order will be made only in exceptional circumstances. All cases involving such requests are, however, reviewed as a matter of priority in accordance with Article VIII, para. 2(f) of Annex 6.

2. Questions of Admissibility

When a case comes before it the Chamber must decide whether or not to accept it, taking into account the admissibility criteria set out in Article VIII, para.2 of Annex 6. The principal criteria relate to: the exhaustion of any effective domestic remedies; the introduction of the application within six months from the date of the final domestic decision; whether the application is compatible with Annex 6 and whether it is manifestly ill-founded. These provisions are similar, but not identical, to the provisions of the European Convention on Human Rights concerning the admissibility of applications to the European Court of Human Rights.

In all cases (apart from any case submitted by a Party to the Annex 6 Agreement) the Chamber carries out a preliminary examination of the admissibility of the application before deciding on the further procedure. It may reject the application as inadmissible at that stage without communicating the case to the respondent Party. If, however, the case is communicated to the respondent Party for observations, the Chamber expects the Party concerned to set out in its written observations any objections it has to the admissibility of the case, failing which it may be precluded from raising such objections at a later stage.

A number of significant decisions have been taken on admissibility issues during the year in which the scope of the Parties' responsibilities under the Agreement has been considered. In the case of *Zornić* (Case No. CH/99/1961) the applicant complained that she was unable to recover possession of an apartment situated in an area of Dobrinja whose status was disputed between the Federation and the Republika Srpska. The area was under the *de facto* control of the Republika Srpska, but the Federation claimed that it was *de jure* part of Federation territory. A question arose as to whether the Republika Srpska was responsible for the matters complained of. Following case-law of the European Court of Human Rights the Chamber held that the responsibility of a Party could be engaged by acts of its authorities producing effects outside its own boundaries. Accordingly, regardless of whether the area in question was located within the territory of the Republika Srpska or not, its responsibility was engaged by virtue of its effective occupation of the area. The case of *Spahalić and Others* (Case No. CH/00/4116 et al.) concerned *inter alia* housing matters in the District of Brčko. The Chamber held that the Republika Srpska had been responsible for such matters until 19 September 2000, when a Memorandum of Understanding had been signed by the Parties which effected the transfer of responsibility for such matters to the authorities of the District. Responsibility thereafter rested with Bosnia and Herzegovina.

In the case of *Miholić and Others* (Case No. CH/97/60 et al.) the question arose as to whether the Federation could be held responsible for legislation which had been imposed by decision of the High Representative. The applicants complained that they had been prevented from registering themselves as owners of, and repossessing, apartments they had purchased from

the Yugoslav National Army (JNA). They maintained that this situation arose from the application of amendments to the law imposed by the High Representative. The Federation pointed out that the Chamber had previously declared inadmissible, as incompatible with the Agreement *ratione personae*, complaints concerning decisions of the High Representative on such matters as the removal of officials from office. It maintained that it should follow the same course in the case in point. The Chamber, referring to case-law of the Constitutional Court, held that in enacting legislation the High Representative was substituting himself for the national authorities. The law he enacted had the status of Federation law in both form and substance and the Federation was the appropriate respondent Party in the case.

3. Striking Out etc.

The Chamber has continued to make frequent use of its powers under Article VIII, para. 3, of Annex 6. Under this provision the Chamber may suspend consideration of, reject or strike out an application on the ground that the applicant does not intend to pursue the application, that the matter has been resolved, or that for any other reason continued examination of the application is no longer justified. It can only take such a decision if satisfied that the result is consistent with the objective of respect for human rights. 96 strike-out decisions have been taken during the year. Such decisions have most commonly been based on specific withdrawal by the applicant, failure of the applicant to respond to communications from the Chamber, leading to the conclusion that he or she does not intend to pursue the case, or resolution of the case, where the primary aim of the applicant (such as the recovery of property) has been achieved.

4. Questions Arising on the Merits

The Chamber continues to deal with a large and diverse case-load. The following is a selective outline of some of the more significant matters the Chamber has dealt with.

a) Property and Housing Matters

As in previous years the Chamber has dealt with a substantial number of cases relating to housing matters. Numerous cases have been received from temporary occupants threatened with eviction on the one hand, and from persons complaining that they have not been able to recover possession of their property on the other. In most cases, in the absence of any exceptional circumstances, the Chamber has rejected as manifestly ill-founded complaints of the former category where it appears that the domestic authorities have acted lawfully for the purpose of reinstating the pre-war occupant. As to the latter category, the Chamber has frequently found violations of the Agreement arising from the failure of the domestic authorities to comply with time limits and other legal obligations relating to the reinstatement of pre-war occupants, including in particular failure to enforce decisions of the Commission for Real Property Claims of Displaced Persons and Refugees established under Annex 7 to the Dayton Agreement.

One case decided during the year, *Miholić and Others* (Case No. CH/97/60 et al.), concerned the measures taken in the Federation following earlier decisions relating to the annulment of sales of JNA apartments. The applicants complained that they were unable to register themselves as owners of, and repossess, apartments which they had purchased from the JNA. Their purchase contracts had been annulled by legislation passed in 1995. In the case of *Medan and Others* (Case No. CH/96/3 et al., Decision of 3 November 1997, Decisions, March - December 1997) the Chamber had held that the legislation in question had infringed the applicants' rights under Article 1 of Protocol No. 1 to the European Convention. Following the *Medan* decision legislation was passed which allowed most persons whose purchase contracts had been annulled by the 1995 legislation to be registered as owners and to repossess the apartments in question. However, certain classes of persons, including the applicants in the *Miholić* case, were excluded from these rights. Essentially the legislation, as applied, excluded persons who were not registered citizens of Bosnia and Herzegovina on 30 April 1991 and were in active service with the JNA on that date, and also excluded persons who were in active military service of any armed forces outside Bosnia and Herzegovina after December 1995. Following a hearing, and having considered *amicus curiae* submissions by the OHR and the UNHCR, the Chamber held that the applicants' rights to peaceful enjoyment of their possessions under Article 1 of the Protocol had been violated and that they had also been discriminated against.

Another case, *Ubović and Others* (Case No. CH/99/2425 et al.) related to the attempts of the applicants to return to properties situated in an area at Glamoč, which had been designated a military training range for the Federation army. The Chamber found that some of the applicants had been *de facto* deprived of certain properties in that the Federation entered into possession and carried out various works on them. As to certain other properties the Chamber found that, although the applicants had not been deprived of the properties, there had been interference with their right to peaceful enjoyment of their possessions resulting from decisions declaring the general interest for expropriation and allowing the Ministry of Defence to enter into possession. These decisions had significantly reduced, in practice, the applicants' ability to use and dispose of their properties. Since the authorities had not complied with procedural requirements of domestic law in any of the cases, the Chamber found that the interferences with the applicants' rights under Article 1 of Protocol No. 1 to the Convention could not be justified and that this provision had been violated. It also found that the rights of some of the applicants to respect for their homes, under Article 8 of the Convention, had been violated.

b) Employment Issues

The Chamber has dealt with a significant number of cases relating to employment during the year. The European Convention does not guarantee any right to employment and generally speaking the Chamber can therefore only deal with complaints relating to deprivation or refusal of employment where it is alleged that there has been discrimination contrary to Article II, para. (2)(b) of Annex 6 in conjunction with one of the provisions relating to employment in the other treaties referred to in Annex 6. Cases in which the applicant has alleged a violation of employment rights and either has not made, or has not sufficiently substantiated an allegation of discrimination have frequently been declared inadmissible.

In some cases issues may nevertheless arise under the European Convention. When for instance, an individual is deprived of a contractual right to salary an issue may arise under the right to property protected by Article 1 of Protocol No. 1 to the Convention. The Chamber found a violation of this provision in the case of *Softić* (Case No. CH/97/76). Issues have also arisen regarding court proceedings relating to employment matters, in particular relating to the right to access to court in civil proceedings and to determination of cases within a "reasonable time" under Article 6 of the European Convention.

One case decided by the Chamber during the year, the case of *Kajtaž and Others* (Case No. CH/98/1309 et al.) related to the appointment procedures in a Ministry of the State of Bosnia and Herzegovina. The nine applicants had all been employed in the Ministry of Justice and General Administration of the Republic of Bosnia and Herzegovina. After the establishment of the new Ministry for Civil Affairs and Communication of the State in December 1997, the applicants continued to work for the new Ministry. Some of the employees of the old Ministry were formally assigned to the new Ministry, but the applicants were not and were eventually removed from employment in 1999. One of the factors taken into account in deciding which employees should be assigned to the new Ministry was the ethnic origin of the persons concerned. The Chamber found that differential treatment arising from an attempt to obtain representation of the major ethnic groups in the public service might pursue a legitimate aim. However, for this aim to be achieved in a legitimate manner the process must be transparent, fair and objective. This had not been the case here. Amongst other defects in the procedures, the Chamber noted that no reasons had been given for the decisions not to employ the applicants, nor had they been interviewed or given formal decisions. No provision was made for the treatment of persons of mixed ethnic origin, as some of the applicants were. The Chamber concluded that the selection process had been arbitrary and that the applicants had been discriminated against in their enjoyment of the right of access to public service under Article 25 (c) of the International Covenant on Civil and Political Rights. It also found that the applicants had been denied the right of access to court under Article 6 of the Convention in view of the absence of any court at the State level and uncertainties as to the jurisdiction of the Entity courts.

c) Missing Persons

The Chamber has received an increasing number of cases submitted by the relatives of persons who have gone missing during the war in Bosnia and Herzegovina. Whilst the Chamber has no competence *ratione temporis* to deal with complaints concerning events before 14 December 1995, it can consider such cases where there is evidence that the person concerned has been in the custody of one of the Parties after that date. It can also consider whether the authorities dealing with the

requests of relatives for information have treated the relatives in a manner that is compatible with their rights under the Agreement. In this respect issues may arise under Article 3 of the European Convention (prohibition of inhuman and degrading treatment) and Article 8 (respect for private and family life).

One such case, *Palić* (Case No. CH/99/3196), decided during the year concerned a Colonel Palić, an officer in the Army of Bosnia and Herzegovina, who had been taken into custody by the Bosnian Serb Army in July 1995. In an application brought before it by his wife, both on her own behalf and on behalf of her missing husband, the Chamber found on the evidence before it that it was established that Colonel Palić had remained in the custody of the Republika Srpska after 14 December 1995. It found that his right to liberty and security of person had been violated, that he had been subjected to inhuman and degrading treatment and, in view of the length of time that had elapsed without information as to his whereabouts or fate, that there had also been a violation of his right to life. It also found that the applicant herself had been the victim of inhuman and degrading treatment arising from the fear and anguish she had suffered as a result of her husband's unclarified fate and that the respondent Party had also violated her right to respect for her private and family life by arbitrarily withholding information as to his fate and whereabouts. Amongst other orders, the Chamber ordered the respondent Party to carry out a full investigation and awarded compensation.

Another such case, *Unković* (Case No. CH/99/2150), arose from the murder of members of the applicant's family in 1992. The Second Panel of the Chamber found that the applicant had been the victim of inhuman and degrading treatment as the result of a failure by the authorities of the respondent Party to investigate and pursue the fate of the family in a timely manner. This decision is not final and binding as at the year's end, in view of pending review proceedings.

d) Freedom of Religion

The plenary Chamber reviewed a decision taken by the Second Panel in relation to attempts by the Islamic Community to reconstruct mosques on sites in and near Zvornik in the Republika Srpska (*Islamic Community Case No. CH/98/1062*). This case raised important issues in relation to the remedies which were appropriate. The Second Panel held that the Republika Srpska had infringed the rights of the applicants by preventing them from using the sites of destroyed mosques and reconstructing the mosques. On two of the sites in question substantial new buildings had been erected, a multi-storey building on one and an Orthodox Church on the other. The Second Panel ordered the respondent Party to make available suitable alternative sites. The applicants maintained that it should have ordered the respondent Party to remove the buildings so as to allow the reconstruction of the mosques on their original sites. The Plenary Chamber essentially upheld the decision of the Panel, drawing persuasive guidance in the matter from domestic property law.

In another case brought by the Islamic Community against the Republika Srpska (*Islamic Community Case No. CH/00/4889*), the Chamber found that the applicants' rights to freedom of religion and to peaceful enjoyment of their possessions had been violated as a result of the unauthorised burial in the Muslim cemetery at Jakeš of a number of deceased non-Muslim patients from an institution housing mentally retarded persons.

5. Amicable Resolutions

No formal settlements have been achieved under Article IX of Annex 6 during the year, but as in previous years many cases have been resolved and struck off the Chamber's list.

6. Remedies

Article XI, para. 1(b) provides that if the Chamber finds a violation of the Agreement it shall address in its decision "what steps shall be taken by the respondent Party to remedy the breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures".

The remedies most commonly awarded by the Chamber continue to be compensation, and the restoration of property within a defined time limit although a wide variety of other orders has also been made. In the *Ubović* case for instance, the

Chamber gave the respondent Party a choice of what action to take. It ordered the respondent Party (a) to decide within six months either to pursue the expropriation of the applicants' property in accordance with the relevant domestic legislation or not to pursue the expropriations and return the applicants' property to them and compensate them for all damage suffered and (b) in either case to take steps to comply with the consequences of its decision and make available funds for compensation of the applicants.

In the *Palić* case 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 and to bring the perpetrators to justice, to release Colonel Palić, if still alive, or otherwise, to make available his mortal remains to Ms. Palić, and to make all information and findings relating to the fate and whereabouts of Colonel Palić known to Ms. Palić. Compensation in the amount of 65,000 KM was also awarded.

In *Miholić and Others*, the Chamber ordered the Federation of Bosnia and Herzegovina to take necessary legislative or administrative action to render ineffective the annulment of the applicants' purchase contracts and enable them to register ownership over their apartments.

7. Review Proceedings

Where a case is decided by a Panel, the plenary Chamber may decide, in accordance with Article X, para. 2, of Annex 6, to review the decision. Rule 64 of the Chamber's Rules of Procedure provides that the Chamber shall not accept a request for review unless it considers that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance, and that the whole circumstances justify reviewing the decision. In practice the Chamber has used its powers of review sparingly.

8. Implementation of Decisions

Under Article XI, para. 6, of Annex 6, the Parties must "implement fully decisions of the Chamber". Generally speaking the Chamber sets a deadline for the fulfilment of any order it makes, running from the date of the decision or, in the case of a decision taken by a Panel, from the date when the decision becomes final and binding. The latter date is the date of expiry of the time limit for the initiation of review proceedings, or the date of completion of any review proceedings initiated. It is also the practice of the Chamber to order the respondent Party to report to it within a set time limit on the steps taken to implement the decision. If an adequate response is not received, the matter is taken up with the Office of the High Representative (OHR). It is also the practice of the Chamber to inform the OHR, as also the OSCE and UNMIBH/IPTF, of all orders for provisional measures so that the Parties' compliance with them can be monitored.

The situation as regards implementation of the Chamber's decisions still gives rise to concern. By the end of 2001 the Chamber had taken a total of 122 decisions on admissibility and merits (some relating to more than one application). In 111 of these decisions, action of some kind by the respondent Party was required. The Parties concerned had complied fully with 65 of these decisions. In the remaining 46 decisions, the Parties concerned had complied partially with 22 and not at all with 24. In the vast majority of these latter decisions, the deadlines for the respondent Parties to comply had expired.

X. FINANCIAL STATUS OF THE CHAMBER

The Chamber received sufficient contributions to enable it to carry out its mandate during 2001. As in previous years, the contributions came almost exclusively from international donors without which the Chamber would not have been able to function. The government of Bosnia and Herzegovina allocated only 100,000 KM to the Human Rights Chamber from its 2001 State budget. This represents a reduction from past years in the State's commitment to providing funding for the Chamber.

Since its inception, the Chamber has not had the benefit of knowing in advance whether it would receive sufficient contributions to enable it to continue functioning for the following year. In most years, including 2001, this uncertainty over the Chamber's existence was not resolved until well after the first quarter of the year. Fortunately, each year, commitments ultimately were made and funding received. However, constant financial insecurity over the years threatening the very existence of the Chamber has meant that long-term strategic planning could not be fully considered. Nonetheless, the Chamber has been quite resourceful in its planning and has made optimal use of available funds to ensure that it deals with the applications it receives as efficiently and fairly as possible.

A list of donors and their contributions plus a summary of the Chamber's expenses in 2001 are attached to this Report as Annex H.

XI. CONCLUSION

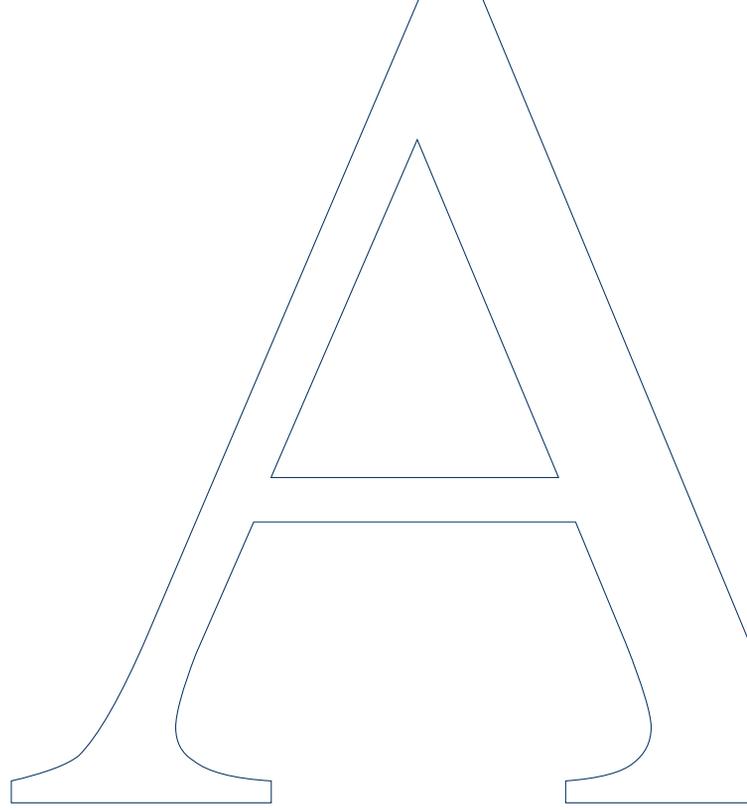
On 24 April 2002, Bosnia and Herzegovina became the 44th member of the Council of Europe. Reform of the judiciary and full compliance with the decisions of the Chamber were two among many conditions this country was to fulfill before accession. These two conditions were not met prior to accession and are now a part of the post-accession requirements to be fulfilled at a later date. With respect to Chamber decisions, the rate of compliance can be characterized as "good" in the Federation and "fair" in the Republika Srpska although many decisions, especially those that pertain to the re-building of mosques, employment discrimination and police investigations of ill-treatment in detention and missing persons, have yet to be fully complied with. Reinstatement of returnees into their homes and payment of compensation ordered by the Chamber seems to be easier for the authorities to implement, although there are still outstanding orders of these kind in which the deadline for compliance has long since expired.

With respect to the judiciary in Bosnia and Herzegovina the present situation is not qualitatively that much different than it was in 1996. The Court of Bosnia and Herzegovina still has not been established, certain decisions taken by national courts still are not implemented and political influence in the judiciary is still commonplace. Some tentative progress has been made and a more systematic reform process of the judiciary is being planned under the auspices of the Independent Judicial Commission. However, concrete results are needed before it can be said that the judiciary can provide reliable remedies to redress injustices committed by the authorities.

In the meantime, the Chamber continues to fill a void evident in the thousands of applications which have been filed with it. Strong political will, not only by the international community, but by the national authorities themselves, will be required to undertake the systematic and substantive reform necessary to create a truly independent judiciary in Bosnia and Herzegovina. Only then can the rule of law reign in this country. Otherwise, the problems that the Chamber now addresses will not be solved, and the Council of Europe and the European Court of Human Rights will merely inherit them.

ANNEXES

- A.** Annex 6 to the General Framework Agreement for Peace in BiH
- B.** Members of the Human Rights Chamber
- C.** Staff of the Secretariat of the Human Rights Chamber
- D.** Rules of Procedure
- E.** Statistical Summary
- F.** Decisions issued in 2001
- G.** Summaries of Selected Decisions on the Merits
- H.** Contributions and Expenses in 2001



A

**Annex 6 to the General Framework
Agreement for Peace in BiH**

ANNEX 6**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.
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.
2. 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.
 - (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.
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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Members of the
Human Rights Chamber

Prof. Dr. Rona Aybay

Member March 1996-present

Appointed by the Council of Europe from Turkey

Mr. Aybay was educated in Istanbul and in the United States of America, where he received a Masters Degree in Comparative Law at Columbia University. Among his past positions, he has been Associate Dean of the Faculty of Political Science at the University of Ankara; Dean of the Faculty of Administrative Sciences at the Middle East Technical University; Vice-President of the Istanbul Bar Association; Member of the European Commission Against Racism and Intolerance; and a Visiting Fulbright Professor at Iowa University Law School in the USA. He is currently a Professor at the Faculty of Law at Istanbul Bilgi University and President of the Aybay Foundation for Legal Studies. He is author of several books and articles in the field of human rights, constitutional law and private international law.

Dr. Hasan Balić

Member March 1996-present

Appointed by the Federation of Bosnia and Herzegovina

Mr. Balić completed postgraduate studies in criminal law at the University of Sarajevo in 1975 and afterwards was awarded a Ph.D. at the Criminal Law Department on 6 December 1999. After having worked as a judge at the Municipal Court in Foča and Municipal Court I in Sarajevo, he was appointed a judge of the District Court in Sarajevo (1975-1981); of the Associated Labour Court in Bosnia and Herzegovina (1981-1984); and from 1984 to 1995 of the Supreme Court of the Republic of Bosnia and Herzegovina and of the Criminal Court (of which he was President), which decided upon the applications of the Hague Tribunal. He was also a member of the Commission for Qualifying Exam for Judges. He has published two books on labour law and occupancy right law and has co-authored articles for national and international law magazines. He is the author of the book "Bosnian Cataclysm, Study of the Foča Case". He is a professor on the Law Faculty of the Sarajevo University where he teaches International Criminal Law and Victimology.

Mr. Mehmed Deković

Member March 1996-present

Appointed by the Federation of Bosnia and Herzegovina

Mr. Deković was born in Podgorica and completed his education in Sarajevo where he graduated from the Faculty of Law at the University of Sarajevo on 30 June 1959. He worked as court and law clerk, and in 1963 he passed the qualifying exam for judge. He worked as a case lawyer and in 1967 as the Head of the legal department of the Institute for Social Insurance of the Republic. He has worked as a judge at the Municipality Court in Sarajevo (1971-1975); at the Commercial Court of Bosnia and Herzegovina (1975-1980); and at the Supreme Court of the Republic of Bosnia and Herzegovina from 1983 to 1996. He also has been a member of several expert commissions. Mr. Deković is the author of several books on employment and property rights; has published articles in several law magazines; and is the main editor of the magazine "Pravna Misao". He published more than 200 legal articles /"Informator" Zagreb, "Savremena praksa" Beograd, ZIPS and "Pravna misao" Sarajevo/. As lecturer he has appeared on many international and national symposiums. He was the President of the Election Commission of the Republic (1987-1990). He was a member of the Commission for Qualifying Exam for Judges, the Commission for state officials and petty offence judges.

Prof. Dr. Giovanni Grasso

Member March 1996-present, Vice President December 1998-present

Appointed by the Council of Europe from Italy

Mr. Grasso holds a Master of Laws Degree from the University of Catania. He is a full Professor of Criminal Law in the Law Faculty of the University of Catania since 1987; Legal Counsel for international cooperation in criminal matters to the Italian Minister of Interior; member of the Catania Bar, the Scientific Council of the ISISC (Institute Supérieur de Sciences Criminelles), and the Scientific Council of the "Espana European Institute"; and President of the Centre for European Criminal Law in Catania. He was also a member of the Research Group set up by the European Commission to make recommendations on the "European Judicial Space." He is a former member of several experts committees of the Council of Europe and of numerous commissions and delegations. He was Legal Counsel to the Italian Government Agent before the European Commission and Court of Human Rights from 1987-1989 and in 1992. He is author of several books, commentaries to the Italian criminal code, and numerous publications in the fields of criminal law, human rights law and international law.

Mr. Andrew William Grotrian*Member December 1997-present**Appointed by the Council of Europe from the United Kingdom*

Mr. Grotrian graduated with a Bachelor of Laws (LLB) in 1966 from the University of St Andrews (Queen's College, Dundee), and was admitted to the Faculty of Advocates (Scotland) in 1970. Mr. Grotrian practised as an advocate during the years 1970-74 and 1984-96. From 1974 to 1984, he worked as a lawyer in the Secretariat of the European Commission of Human Rights. He later joined the United Nations Independent Jurist for Namibia as an Assistant, where he was also appointed to the UN Mission on Detainees. From 1996 to 1997 he was the Registrar of the Human Rights Chamber.

Mr. Želimir Juka*Member March 1996-present**Appointed by the Federation of Bosnia and Herzegovina*

Educated at the University of Sarajevo, Mr. Juka was appointed as a judge of District Court II in Sarajevo until 1969. Afterwards, he was nominated Deputy of the Municipality and District Attorney in Split, and Deputy Republic Public Attorney from 1983 until 1994, when he was appointed as a judge of the Constitutional Court of the Republic of Bosnia and Herzegovina. He resigned from the Constitutional Court in 1996. He also served as a Deputy Prosecutor for the Federation of Bosnia and Herzegovina in 1997, but resigned in 1998.

Prof. Dr. Viktor Masenko-Mavi*Member March 1997-present**Appointed by the Council of Europe from Hungary*

Having specialised in international law at Kiev State University, where he was awarded a Ph.D., Mr. Masenko - Mavi has been working since 1989 as a Senior Research Fellow at the Institute for Legal and Administrative Sciences at the Hungarian Academy of Sciences. He has carried out teaching activities simultaneously with research work. Presently he is the chair of international law of Budapest University of Economics and Public Administration. Since 1991 he has been a Member of the Council of Europe Committee on the Development of Human Rights and the Deputy Director of the Hungarian Centre for Human Rights. He has published three books and is the author of numerous articles and reports on different problems of international law.

Mr. Jakob Möller*Member March 1996-present, Vice President December 1996-December 1997,**Acting President July-October 1997**Appointed by the Council of Europe from Iceland*

A lawyer and judge from Iceland, Mr. Möller worked in the UN Centre for Human Rights (1971-1996) as the Chief of the Communications Branch (1974-1996), and Secretary of the UN Commission on Human Rights (1995-1996). He has also been a lecturer for the UN and a speaker at universities and institutions on the UN human rights programme. Mr. Möller has written articles and commentaries for several international law publications on human rights.

Prof. Dr. Manfred Nowak*Member March 1996-present, Vice President December 1997-December 1998**Appointed by the Council of Europe from Austria*

Mr. Nowak holds a Master of Laws Degree and Ph.D. from Vienna University and Columbia University in New York. At present he is a Professor of Public Law at the Austrian Federal Academy of Public Administration (since 1989) and Director of the Ludwig Boltzmann Institute of Human Rights at Vienna University (since 1992). He is a member of the International Commission of Jurists, the UN Working Group on Disappearances and recipient of the 1994 UNESCO Prize for the Teaching of Human Rights. Among his past positions, he has been Director of the Netherlands Institute of Human Rights at Utrecht University (1987-1989), member of the Austrian delegation to the UN Commission on Human Rights (1986-1994), and UN Expert on Missing Persons in the Former Yugoslavia (1994-1997). He is author of numerous books and articles in the fields of human rights, public and international law, and politics.

Mr. Miodrag Pajić*Member March 1996-present**Appointed by the Republika Srpska*

After graduating from the Faculty of Law in Banja Luka, Mr. Pajić worked as an Agent, the Director of legal and personnel sector of the large Manufacturing Company in Brčko. In 1990, Mr. Pajić was appointed as the Director of Legal Property Department and Cadastral Survey in the Municipality of Brčko and as a member of the Brčko Municipality Government. He performed the duty of the Secretary of the Municipality Brčko. He was also Mayor of Brčko from March 1994 until 1997. By the establishment of the Brčko District of Bosnia and Herzegovina he was appointed as a member of the multi-ethnic Government of the Brčko District, and afterwards as the Vice-President of the Transitional Assembly of the Brčko District of Bosnia and Herzegovina.

Ms. Michèle Picard*Member March 1996-present, President November 1997-present**Appointed by the Council of Europe from France*

After receiving a Master of Laws Degree from the University of Paris II, Ms. Picard was appointed as a judge in 1982. She later joined the Cour de Cassation as an auditeur in 1984. She worked with the Ministry of Economy and Finance in commercial and social law from 1987 to 1989. In 1989, Ms. Picard began working for the Ministry of Foreign Affairs in the legal department where she dealt with international human rights, including cases before the European Court of Human Rights and the UN Committee of Human Rights. From 1995 to 2001, Ms. Picard has been working as a judge at the Tribunal de Grande Instance de Paris. Since 2001, she is Vice President of the Tribunal de Grande Instance de Nanterre.

Prof. Dr. Vitomir Popović*Member March 1996-present**Appointed by the Republika Srpska*

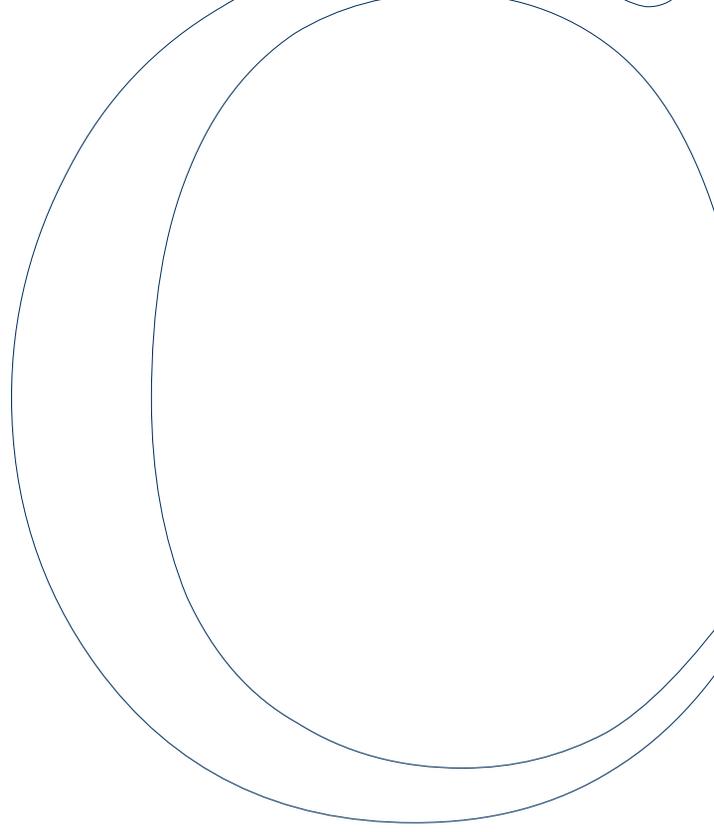
Mr. Popović holds a MA degree from the Faculty of Law in Banja Luka and a Ph.D. in International Commercial Law at the University of Belgrade. He was President and judge of the First Instance Court in Banja Luka and Vice-President of the Government of Republika Srpska for Internal Affairs; Director of the Institute for International Law and International Business Co-operation in Banja Luka; arbiter for the Republika Srpska for the area of Brčko; and arbiter of foreign trade arbitration in the Federal Republic of Yugoslavia and Macedonia. He is permanently employed as a Professor of Foreign Trade Law at the Law School of the University of Banja Luka and is a judge of the Constitutional Court of Bosnia and Herzegovina. He has published a number of professional and scientific works in the country and abroad. He participated in preparation of several projects in the field of establishment of duty free zones and foreign investments in the Republika Srpska.

Prof. Dr. Dietrich Rauschnig*Member March 1996-present**Appointed by the Council of Europe from Germany*

Mr. Rauschnig obtained his legal training at the Universities of Hamburg, Munich and Vancouver B.C., and at the courts of Hamburg. Holding a doctoral degree from the University of Hamburg, he received his Habilitation at the Law Faculty of Kiel. Since 1970 he has been a full Professor of Public Law and Director of the Institute of Public International Law at the University of Göttingen. He has been, *inter alia*, dean of his faculty, founding dean of the Law Faculty at Halle/Saale and Legal Counsel to the State Government of Lower Saxony. The books and articles he has published have dealt mainly with topics of public international law and constitutional law.

Mr. Mato Tadić*Member June 1999-present**Appointed by the Federation of Bosnia and Herzegovina*

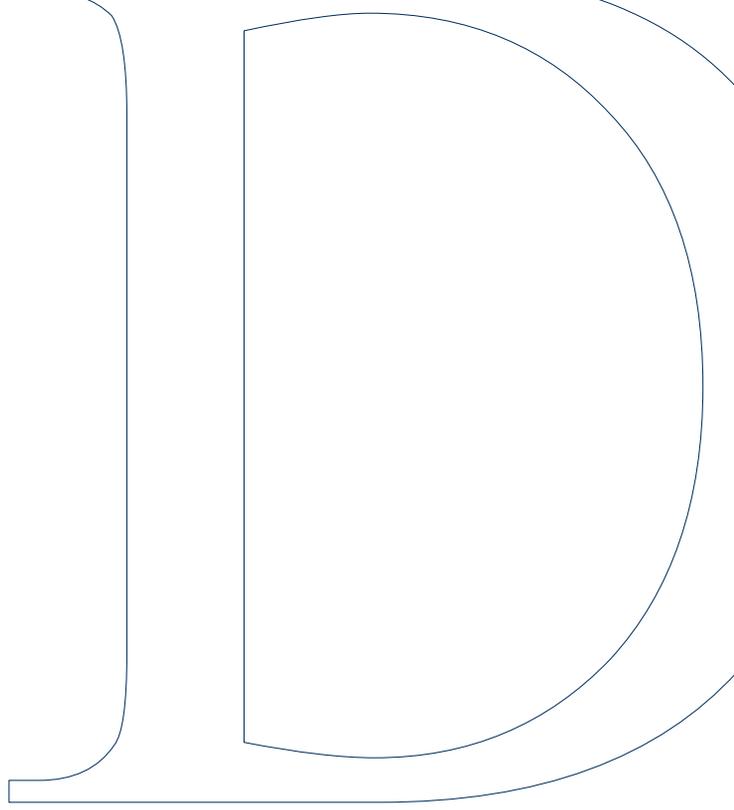
After graduating from the Faculty of Law of the University of Sarajevo in 1977, Mr. Tadić worked with the Municipal Public Prosecutor's Office in Brčko. In 1978 he was appointed a Deputy Public Prosecutor and in 1983 Public Prosecutor. In 1990 he was appointed Deputy Republic Public Prosecutor for Bosnia and Herzegovina in Sarajevo. From 1994-1998 Mr. Tadić served as Minister of Justice of the Federation of Bosnia and Herzegovina. He is a member of the Commission for Supervision of Regulations in Brčko District in accordance with the Arbitration Decision for Brčko District and member of several expert groups for reform of the judiciary in the FBiH and Bosnia and Herzegovina, especially in criminal law. He is the author of several publications in criminal law, constitutional law and local self-government and human rights.



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Staff of the Secretariat of the
Human Rights Chamber

Executive Officer:	Therese Nelson
Registrar:	Peter Kempees (until September 2001) Ulrich Garms
Deputy Registrar:	Olga Kapić
Lawyers:	Andreas Busch Mira Čondrić Antonia De Meo Vanesa Ibrišimović Ljiljana Jakšić Cara Jordan Sanela Kovač Andreas Ljungholm Katharina Peschke Mirjana Prijic-Mikić Čedomir Radnić (until September 2001) Ralph Roche (until February 2001) Sheri Rosenberg Steven Weiss Erda Zaćiragić
Senior Interpreter/Translator:	Brankica Bjeloš (until February 2001)
Interpreters/Translators:	Mirsada Panjeta Azra Abdulahagić Jelena Avlijaš Hidajeta Demirović Ivana Falatar Dubravka Fijala Suzana Karamehmedović Borjana Stanišljević
Financial Officer:	Tatjana Luledžija
Office Manager:	Branko Čupović
Executive Assistant:	Jasmina Hadžić
File Management Assistants:	Nirmela Borišić Bojan Lisac
Banja Luka Office Coordinator/Financial Assistant:	Katarina Jovanović
Receptionist/Secretaries:	Azra Zornić Mladen Prodan
Senior Driver:	Nedžmedin Zaimović
Driver/Administrative Assistant:	Izet Bibić
Security Guards:	Dragiša Dujaković Rajko Runić Veličko Markičević
Interns:	Goran Behmen Brett Dakin Čazim Hasanspahić Gregor Kemper Aysun Sengoez Sonja Stamenić Belma Zvrko



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HUMAN RIGHTS CHAMBER FOR BOSNIA AND HERZEGOVINA

Adopted on 13 December 1996
(Amended on 15 May and 11 September 1998, and on 8 March 2001)

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 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;
 - 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.

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.

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Statistical Summary

Statistical Summary

through 31 December 2001

Applications Registered with the Chamber (since March 1996)	8,481
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Decisions of the Chamber	
- Resolving 1,280 applications*	1,031
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Decisions on admissibility	
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*One decision may resolve more than one application.

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Decisions issued in 2001

- CH/97/43 Šujanski v. Federation BiH
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- CH/97/44 Husedžinović v. RS
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- CH/97/55 Stojanović v. State BiH and Federation BiH
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- CH/97/60, CH/98/276, 287, 362 and CH/99/1766
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- CH/97/71 Banjac v. State BiH and Federation BiH
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- CH/97/73 Bojkovski v. State BiH and Federation BiH
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- CH/97/76 Softić v. State BiH and Federation BiH
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- CH/97/103 Kuprež v. Federation BiH
Decision to strike out, adopted 9 May 2001
- CH/97/112 Pajo v. Federation BiH
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- CH/97/114 Ramić v. Federation BiH
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- CH/98/132 Mirkov v. State BiH and Federation BiH
Decision to strike out, adopted 8 May 2001
- CH/98/133 Vujović v. Federation BiH
Decision to strike out, adopted 8 February 2001
- CH/98/139 Muratagić v. Federation BiH
Decision to strike out, adopted 8 February 2001
- CH/98/187 Rakovec v. Federation BiH
Decision to strike out, adopted 8 February 2001
- CH/98/198 Avdić v. Federation BiH
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- CH/98/232 and 480
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- CH/98/234 Leberl v. Federation BiH
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Decision on request for review, adopted 9 November 2001
- CH/98/239 Bajramović v. State BiH and Federation BiH
Decision to strike out, adopted 5 December 2001
- CH/98/246 Jović v. State BiH
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CH/98/247	Zulić v. State BiH and Federation BiH Decision to strike out, adopted 6 September 2001
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CH/98/250	Salković v. State BiH and Federation BiH Decision to strike out, adopted 6 December 2001
CH/98/252	Bilić v. State BiH and Federation BiH Decision to strike out, adopted 6 December 2001
CH/98/265	Sendić v. State BiH and Federation BiH Decision to strike out, adopted 5 December 2001
CH/98/286	Randelović v. State BiH and Federation BiH Decision to strike out, adopted 7 November 2001
CH/98/323	Kapetinić v. State BiH and Federation BiH Decision to strike out, adopted 6 September 2001
CH/98/347	Redžić v. State BiH and Federation BiH Decision to strike out, adopted 6 September 2001
CH/98/361	J.F. v. State BiH and Federation BiH Decision to strike out, adopted 5 December 2001
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CH/98/511	Tabaković v. State BiH and Federation BiH Decision to strike out, adopted 5 December 2001
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CH/98/575	Odobašić v. Republika Srpska Decision on admissibility and merits, delivered 11 May 2001 Decision on request for review, adopted 6 July 2001
CH/98/582	Kukurika v. Federation BiH Decision to strike out, adopted 12 October 2001
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- CH/98/708 Goronja v. State BiH and Federation BiH
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- CH/98/726 D.Đ. v. Federation BiH
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- CH/98/744, 864, 913, 979, 1032, 1428, CH/99/1457, 2192, 2575 and 2745
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- CH/98/779 Reljić-Biondi v. Federation BiH
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- CH/98/780 Raković v. Republika Srpska
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- CH/98/834 O.K.K. v. Republika Srpska
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- CH/98/865 Pervan v. Federation BiH
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- CH/98/972 Bojić v. Republika Srpska
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- CH/98/976 Čarapić v. Federation BiH
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- CH/98/1018 Pogarčić v. Federation BiH
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- CH/98/1019 Sp.L., J.L., Sv.L. and A.L. v. Republika Srpska
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- CH/98/1060 Majstorović v. State BiH and Federation BiH
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- CH/98/1062 Islamic Community v. Republika Srpska
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- CH/98/1063 Todić v. Federation BiH
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- CH/98/1066 Kovačević v. Federation BiH
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- CH/98/1068 Šošo v. Federation BiH
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- CH/98/1238 D.S. v. State BiH, Federation BiH and Republika Srpska
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- CH/98/1239 Dragić v. Federation BiH
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- CH/98/1242 Savić v. Republika Srpska
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- CH/98/1309, 1312, 1322, 1314, 1318, 1319, 1321, 1322, 1323 and 1326
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- CH/98/1310 Mehmedinović v. State BiH and Federation BiH
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- CH/98/1335 Rizvić v. Federation BiH
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- CH/98/1370 Huskić v. Federation BiH
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- CH/99/1441 Vuković v. Federation BiH
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- CH/99/1505 Šabančević v. Federation BiH
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- CH/99/1532 Milošević v. Federation BiH
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- CH/99/1555 Begović v. State BiH and Federation BiH
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- CH/99/1560 Lesko v. Republika Srpska
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- CH/99/1561 Žerić v. State BiH and Federation BiH
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- CH/99/1568 Ćoralić v. Federation BiH
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- CH/99/1584 N.N. v. Republika Srpska
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- CH/99/1659 J.P. v. Federation BiH
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- CH/99/1675 Tuzlić v. State BiH and Federation BiH
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- CH/98/1802 Radovanović v. Republika Srpska
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- CH/98/1826 Oljača v. Republika Srpska
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- CH/99/1834 Švarc v. Republika Srpska
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- CH/99/1860 "L.U.Z." v. Republika Srpska
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- CH/99/1896 Vučković v. Federation BiH
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- CH/99/1919 Šučur and Lučić v. Federation BiH
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- CH/99/1935 Davidović v. Federation BiH
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Decision on request for review, adopted 11 October 2001
- CH/99/1941, 2365, 2384 and 2391
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- CH/99/1947 Dokić v. Federation BiH
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- CH/99/1955 Pačavra v. Federation BiH
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- CH/99/1961 Zornić v. State BiH, Federation BiH and Republika Srpska
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- CH/99/1981 Ilić v. Republika Srpska
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- CH/99/2106 Skoko v. Federation BiH
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- CH/99/2117 Herak v. Federation BiH
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- CH/99/2448 Pandurević v. Federation BiH
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- CH/99/2604 Jakovljević v. Federation BiH
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- CH/99/2625 Suljović v. Federation BiH
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- CH/99/2633 Bratić v. Federation BiH
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- CH/99/2656 Islamic Community v. Republika Srpska
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- CH/99/2675 Tahirović v. Federation BiH
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- CH/99/2696 Brkić v. Federation BiH
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- CH/99/2736 Kapetanović v. Federation BiH
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- CH/99/2737 Orešković v. State BiH, Federation BiH and Republika Srpska
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- CH/99/2805 Sefić v. Federation BiH
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- CH/99/2834 Simović v. Federation BiH
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- CH/99/2934 Cindrić v. Federation BiH
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- CH/99/2985 Brkić v. Federation BiH
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- CH/99/2999 Tomaž v. Federation BiH
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- CH/99/3016 Božinković v. Federation BiH
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- CH/99/3050 Mujagić v. State BiH and Federation BiH
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- CH/99/3196 Palić v. Republika Srpska
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- CH/99/3213 Kalkak v. Republika Srpska and Federation BiH
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- CH/99/3218 Šimičević v. State BiH and Federation BiH
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- CH/99/3410 Žuža v. Federation BiH
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- CH/99/3425 Hadžlabdić v. Federation BiH
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- CH/00/3487 Gajić v. Federation BiH
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- CH/00/6141 Grahovac v. Federation BiH
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CH/01/7082	Banović v. Republika Srpska Decision on admissibility, adopted 9 March 2001
CH/01/7088	Bulić v. Republika Srpska Decision on admissibility, adopted 7 March 2001

- CH/01/7096 Kojić v. Republika Srpska
Decision on admissibility, adopted 3 July 2001
- CH/01/7111 Pavičar v. Republika Srpska
Decision on admissibility, adopted 3 April 2001
- CH/01/7112 Banović v. Republika Srpska
Decision on admissibility, adopted 6 April 2001
- CH/01/7129 Simeunović v. Republika Srpska
Decision on admissibility, adopted 9 May 2001
- CH/01/7135 Janjić v. Republika Srpska
Decision on admissibility, adopted 5 April 2001
- CH/01/7141 Trivić v. Federation BiH
Decision on admissibility, adopted 3 July 2001
- CH/01/7142 Štrbac v. Republika Srpska
Decision on admissibility, adopted 8 May 2001
- CH/01/7144 Majstorović v. Republika Srpska
Decision on admissibility, adopted 8 May 2001
- CH/01/7145 Jandrić v. Republika Srpska
Decision on admissibility, adopted 9 May 2001
- CH/01/7146 Palalić v. Republika Srpska
Decision on admissibility, adopted 8 May 2001
- CH/01/7150 Adamović v. Republika Srpska
Decision on admissibility, adopted 5 June 2001
- CH/01/7158 Topić v. Republika Srpska
Decision on admissibility, adopted 7 May 2001
- CH/01/7162 Smiljanić v. Federation BiH
Decision on admissibility, adopted 5 June 2001
- CH/01/7176 Kovačević v. Republika Srpska
Decision on admissibility, adopted 5 July 2001
- CH/01/7178 Arsenić v. Republika Srpska
Decision on admissibility, adopted 5 June 2001
- CH/01/7179 Obradović v. Republika Srpska
Decision on admissibility, adopted 6 September 2001
- CH/01/7180 Gigović v. Republika Srpska
Decision on admissibility, adopted 5 June 2001
- CH/01/7181 Stajčić v. Republika Srpska
Decision on admissibility, adopted 5 June 2001
- CH/01/7182 Samardžija v. Republika Srpska
Decision on admissibility, adopted 5 June 2001
- CH/01/7187 Stamenić v. Republika Srpska
Decision on admissibility, adopted 8 June 2001
- CH/01/7189 Balaban v. Republika Srpska
Decision on admissibility, adopted 8 June 2001

CH/01/7213	Zrnić v. Republika Srpska Decision on admissibility, adopted 3 July 2001
CH/01/7214	Bojić v. Republika Srpska Decision on admissibility, adopted 8 September 2001
CH/01/7217	Božić v. Republika Srpska Decision on admissibility, adopted 6 September 2001
CH/01/7229	Lojić v. Republika Srpska Decision on admissibility, adopted 6 September 2001
CH/01/7233	Todorović v. Federation BiH Decision on admissibility, adopted 6 September 2001
CH/01/7234	B.V. v. Republika Srpska Decision on admissibility, adopted 10 November 2001
CH/01/7236	Talijan v. Republika Srpska Decision on admissibility, adopted 8 September 2001
CH/01/7253	Stojić v. Republika Srpska Decision on admissibility, adopted 6 September 2001
CH/01/7261	Novaković v. Republika Srpska Decision on admissibility, adopted 10 October 2001
CH/01/7265	Čorić v. Republika Srpska Decision on admissibility, adopted 10 October 2001
CH/01/7276	Kisin v. Republika Srpska Decision on admissibility, adopted 5 September 2001
CH/01/7277	Dejanović v. Republika Srpska Decision on admissibility, adopted 12 October 2001
CH/01/7285	Ninković v. Republika Srpska Decision on admissibility, adopted 12 October 2001
CH/01/7296	Halilović v. Republika Srpska Decision on admissibility, adopted 7 November 2001
CH/01/7302	Klapuh v. Federation BiH Decision on admissibility, adopted 6 April 2001
CH/01/7332	Avdibegović v. Federation BiH Decision on admissibility, adopted 6 April 2001
CH/01/7355	Čolić v. Federation BiH Decision on admissibility, adopted 9 May 2001
CH/01/7356	Kanlić v. Federation BiH Decision on admissibility, adopted 8 May 2001
CH/01/7364	Hadžiavdija v. Federation BiH Decision on admissibility, adopted 8 May 2001
CH/01/7393	Hadžiavdić v. Federation BiH Decision on admissibility, adopted 9 May 2001
CH/01/7395	I.I. v. State BiH and Federation BiH Decision on admissibility, adopted 8 June 2001

- CH/01/7451 M.I. v. Federation BiH
Decision on admissibility, adopted 5 June 2001
- CH/01/7469 Husejnagić v. Federation BiH
Decision on admissibility, adopted 5 June 2001
- CH/01/7474 Hadžić v. Federation BiH and Republika Srpska
Decision on admissibility, adopted 3 July 2001
- CH/01/7486 Simanić v. Federation BiH
Decision on admissibility, adopted 10 November 2001
- CH/01/7493 Marjanović v. State BiH and Federation BiH
Decision to strike out, adopted 5 July 2001
- CH/01/7504 Kalajdžić v. State BiH and Federation BiH
Decision on admissibility, adopted 8 September 2001
- CH/01/7508 Trifković and 6 others v. Federation BiH
Decision on admissibility, adopted 12 October 2001
- CH/01/7532 Baličević v. Federation BiH
Decision on admissibility, adopted 3 July 2001
- CH/01/7533 Džafić v. Federation BiH
Decision on admissibility, adopted 3 July 2001
- CH/01/7542 Delić v. Federation BiH
Decision on admissibility, adopted 5 June 2001
- CH/01/7556 Lukenda and Bevanda v. Federation BiH
Decision on admissibility, adopted 5 July 2001
- CH/01/7558 Zeković v. Federation BiH
Decision on admissibility, adopted 10 November 2001
- CH/01/7559 Hećo v. State BiH and Federation BiH
Decision on admissibility, adopted 3 July 2001
- CH/01/7571 Ramić v. Federation BiH
Decision on admissibility, adopted 3 July 2001
- CH/01/7598 Hido v. Federation BiH
Decision on admissibility, adopted 12 October 2001
- CH/01/7629 Hasanović v. Federation BiH
Decision on admissibility, adopted 6 September 2001
- CH/01/7634 Čaušević v. Federation BiH
Decision on admissibility, adopted 6 December 2001
- CH/01/7669 Kuduzović v. Federation BiH
Decision on admissibility, adopted 12 October 2001
- CH/01/7674 Kunić v. Federation BiH
Decision on admissibility, adopted 9 November 2001
- CH/01/7686 Makić v. Federation BiH
Decision on admissibility, adopted 9 November 2001
- CH/01/7708 Kadrić v. Federation BiH and Republika Srpska
Decision on admissibility, adopted 12 October 2001

CH/01/7709	Hrnjić v. Federation BiH Decision on admissibility, adopted 8 September 2001
CH/01/7715	Handžić v. Federation BiH Decision on admissibility, adopted 12 October 2001
CH/01/7716	Kadrić v. Federation BiH and Republika Srpska Decision on admissibility, adopted 12 October 2001
CH/01/7720	Ahmetspahić v. Federation BiH Decision on admissibility, adopted 12 October 2001
CH/01/7723	E.P. v. Federation BiH Decision on admissibility, adopted 6 September 2001
CH/01/7724	Mašović v. State BiH Decision to strike out, adopted 9 November 2001
CH/01/7725	Hasanagić v. Federation BiH Decision on admissibility, adopted 6 September 2001
CH/01/7729	Čović v. Federation BiH Decision on admissibility, adopted 5 December 2001
CH/01/7733	Dajdžić v. Federation BiH Decision on admissibility, adopted 6 September 2001
CH/01/7737	Drljević v. Federation BiH and Republika Srpska Decision on admissibility, adopted 6 September 2001
CH/01/7739	Dulić v. Federation BiH Decision on admissibility, adopted 12 October 2001
CH/01/7761	Kramar, Kramar, Trogrlić, Kramar, Čolo, Milinović, Mrnjavac, Martić, Martić and Kramar v. Federation BiH Decision on admissibility, adopted 9 November 2001
CH/01/7765	Vatrenjak v. Federation BiH Decision on admissibility, adopted 9 November 2001
CH/01/7777	Čorbić v. Federation BiH Decision on admissibility, adopted 9 November 2001
CH/01/7786	Godić v. Federation BiH Decision on admissibility, adopted 12 October 2001
CH/01/7817	Sirčić v. Federation BiH Decision on admissibility, adopted 5 December 2001
CH/01/7823	Omeragić v. Federation BiH Decision on admissibility, adopted 9 November 2001
CH/01/7842	Mujić v. Federation BiH Decision on admissibility, adopted 8 October 2001
CH/01/7845	Mekić v. Federation BiH Decision on admissibility, adopted 5 December 2001
CH/01/7866	Kovač v. Federation BiH Decision on admissibility, adopted 12 October 2001
CH/01/7878	Ibišević v. Federation BiH Decision on admissibility, adopted 12 October 2001

CH/01/7922	Salčin v. Federation BiH Decision on admissibility, adopted 12 October 2001
CH/01/7930	Česko v. Federation BiH Decision on admissibility, adopted 10 November 2001
CH/01/7937	Bašić v. Federation BiH Decision on admissibility, adopted 9 November 2001
CH/01/7946	Pecikoza v. Federation BiH Decision on admissibility, adopted 6 December 2001
CH/01/7981	Šundo v. Federation BiH Decision on admissibility, adopted 5 December 2001
CH/01/8014	Kuvač v. Republika Srpska Decision on admissibility, adopted 10 October 2001
CH/01/8026	Mačković v. Republika Srpska Decision on admissibility, adopted 10 November 2001
CH/01/8034	Gligić v. Republika Srpska Decision on admissibility, adopted 10 November 2001
CH/01/8037	Radić v. Republika Srpska Decision on admissibility, adopted 5 November 2001
CH/01/8038	Stanivuković v. Republika Srpska Decision on admissibility, adopted 10 November 2001
CH/01/8061	Ilić v. Republika Srpska Decision on admissibility, adopted 5 December 2001
CH/01/8314	Nikšić v. Federation BiH Decision on admissibility, adopted 6 December 2001
CH/01/8321	Avdagić v. Federation BiH Decision on admissibility, adopted 5 December 2001
CH/01/8427	Kaučija v. Federation BiH Decision on admissibility, adopted 5 December 2001



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Summaries of Selected
Decisions on the Merits

Case No.:	CH/97/60, CH/98/276, CH/98/287, CH/98/362 and CH/99/1766
Applicant:	Andrija MIHOLIĆ, Božo ČORAPOVIĆ, Milorad ĆIRIĆ, Dušan RISTIĆ and Mihajlo BUZIĆ
Respondent Party:	Bosnia and Herzegovina and Federation of Bosnia and Herzegovina
Other Title:	"3a JNA Case"
Date Delivered:	7 December 2001

DECISION ON ADMISSIBILITY AND MERITS

Factual Background

These cases concern the attempts of the applicants, who were members of the Yugoslav National Army ("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 Law on Cessation of the Application of the Law on Abandoned Apartments ("Article 3a") in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right.

Article 3a 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 ("SFRY") from repossessing apartments in 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 Bosnia and Herzegovina. At the time of consideration, 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 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 application admissible against the Federation.

Merits

Article 1 of Protocol No. 1

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. 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 Law on Cessation 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 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, 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. 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 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 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 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 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.

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 three of 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

As of 31 December 2001, the decision on request for review had not been decided.

Case No.:	CH/98/834
Applicant:	O.K.K.
Respondent Party:	Republika Srpska
Date Delivered:	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 Commission for Real Property Claims ("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 the applicant had already made repeated unsuccessful attempts to remedy her situation, the Chamber found 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 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 the applicant's 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 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(2) and decided to reject the request for review.

Decision adopted 10 May 2001

Case No.:	CH/98/1019
Applicant:	Sp.L., J.L., Sv.L. and A.L.
Respondent Party:	Republika Srpska
Date Delivered:	6 April 2001

DECISION ON ADMISSIBILITY AND MERITS

Factual Background

The applicants are citizens of Bosnia and Herzegovina. Sp.L. ("first applicant"), 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 ("Bank"). 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 Bank. J.L., Sv.L. and A.L. were represented by the first applicant 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 Bank 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 Bank 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 Bank.

Decision adopted 3 April 2001

Decision delivered 6 April 2001

Case No.:	CH/98/1309, CH/98/1312, CH/98/1314, CH/98/1318, CH/98/1319, CH/98/1321, CH/98/1322, CH/98/1323 and CH/98/1326
Applicant:	Almasa KAJTAZ, Dobriša BIJEVIĆ, Azira SIVČEVIĆ, Altijana MEŠIĆ, Rasema BEGIĆ, Elvedin DEVIĆ, Radenka CVIJETIĆ, Jasna ŠLJIVO, and Dženana ŠEHOVIĆ
Respondent Party:	Bosnia and Herzegovina
Date Delivered:	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 (the "Ministry") 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, they continued working within the new Ministry, in the same positions until various dates in the beginning of 1999. On 8 September 1998, they learned that they had been relegated to the status of "unassigned" workers and that as a result they received lower salaries than other employees and stopped receiving benefits commencing on or around June 1998. They stopped receiving any compensation on 31 December 1998. They 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(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, 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 International Covenant on Civil and Political Rights, 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 with 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.

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

As of 31 December 2001, the decision on request for review had not been decided.

Case No.:	CH/99/1568
Applicant:	Bahra ĆORALIĆ
Respondent Party:	Federation of Bosnia and Herzegovina
Date Delivered:	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 this assault. 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 3 years and 9 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(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

As of 31 December 2001, the decision on request for review had not been decided.

Case No.:	CH/99/1961
Applicant:	Azra ZORNIĆ
Respondent Party:	Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, and Republika Srpska
Date Delivered:	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 the area in which the apartment is located is, de jure, according to the Dayton Peace Agreement, part of the Federation. However, it is, de facto, under the control of the Republika Srpska. The area in question, along the Inter-Entity Boundary Line ("IEBL"), 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 IEBL, the responsibility of the Republika Srpska was engaged by virtue of its effective occupation 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.

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 Law on the Cessation of the Application of the Law on the Use of Abandoned Property 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 RS 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.

Dissenting/Concurring 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 IEBL. 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.

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

Case No.:	CH/99/2150
Applicant:	Đorđo UNKOVIĆ
Respondent Party:	Federation of Bosnia and Herzegovina
Date Delivered:	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, 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 complains 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."

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 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 murder 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 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 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. 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

As of 31 December 2001, the decision on request for review had not been decided.

Case No.:	CH/99/2425, CH/99/2426, CH/99/2427, CH/99/2428, CH/99/2429, CH/99/2430, CH/99/2431, CH/99/2433, CH/99/2434 and CH/99/2435
Applicant:	Neđeljko UBOVIĆ, Ilija UBOVIĆ, Mladen UBOVIĆ, Radovan HAJDER, Mihajlo TRAVAR, Pero KRČMAR, Stoja JUZBAŠIĆ, Nikola (Riste) HAJDER, Pane ŠAVIJA and Zdravko RADIČIĆ
Respondent Party:	Federation of Bosnia and Herzegovina
Other Title:	"Glamoč Cases"
Date Delivered:	7 September 2001

DECISION ON ADMISSIBILITY AND MERITS

Factual Background

The cases concern the attempts of the ten applicants, all of Serb origin, who were displaced in 1995, to return to their privately-owned property consisting of agricultural land and buildings in the municipality of Glamoč in the Federation. The properties concerned are located within a military training range used by the Federation Army. The area north of Glamoč, in which the applicants' property is located, was designated for the construction of a combat training centre of the Federation Army in May 1998.

In October 1998 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 "tank-range" 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 "laser-exercise" was held in September 2000. All ten applicants own property within the wider area of the military range, while five applicants own or co-own property within the "tank-range."

Admissibility

Finding that no effective remedy was available to the applicants which could have afforded redress in respect of the breaches alleged, and that because the combat training centre project was designed for the purposes of the Federation Army, the applications were correctly directed against the Federation, the Chamber declared the applications admissible.

Merits

Article 1 of Protocol No. 1 to the Convention

With regard to the five applicants who own or co-own property in the "tank-range," the Chamber found that the Federation's interference with their property was a "deprivation of possession" within the meaning of Article 1 of Protocol No. 1 even though the applicants were still formally owners of the property. As it was not possible for the applicants to enjoy their property in the way they wished, the respondent Party had taken de facto possession of the area of the tank-range. This deprivation was not justified because the expropriation proceedings initiated by the respondent Party were not carried out in accordance with the appropriate law. Thus there was a violation of the second sentence of Paragraph 1 of Article 1 of Protocol No. 1.

With regard to all ten applicants, who own property within the wider area of the military range, although they were not formally deprived of their possessions at any time, the Chamber found that the Federation's actions constituted an interference with the applicants' rights to the peaceful enjoyment of their possessions that was not in accordance with the law. Thus there was a violation of the first sentence of Paragraph 1 of Article 1 of Protocol No. 1.

Article 8 of the Convention

With regard to the applicants who did not have their permanent residence in the area of the combat training centre, the Chamber found that their properties did not constitute a "home," and thus that Article 8 had not been violated.

With regard to the applicants who lived in the "tank-range," the Chamber found that their properties were their "homes" for the purposes of Article 8. As the respondent Party interfered with the applicants' rights to respect for their homes and did not act in accordance with the law, there was a violation of Article 8.

With regard to the applicants who lived in the wider area of the military training range, the Chamber found that they used their houses as their homes until they were forced to leave in 1995 due to the hostilities. While it was their intention to return to their homes when it was safe to do so, the practical effect of the Federation's actions was to leave the applicants in legal uncertainty about the future of those properties. The Federation's actions constituted an interference with the applicants' right to respect for home that was not in accordance with the law. Thus there was a violation of Article 8.

Article 2 of Protocol No. 4 to the Convention

In view of its findings that there was a violation of Article 1 of Protocol No. 1, and also in view of its findings in respect of Article 8, the Chamber found it unnecessary to examine the cases separately under Article 2 of Protocol No. 4, which guarantees the right to liberty of movement.

Discrimination

The Chamber noted that all the applicants are of Serb ethnic origin and that, before the hostilities, the Glamoč area was owned by citizens of Serb ethnic origin. On the other hand, the area was indicated to the respondent Party as a suitable military training ground by SFOR, and even before the hostilities, the Yugoslav National Army had conducted military exercises in the Glamoč area. Thus the Chamber could not find that the selection of the area for a military training range was connected to the applicants' ethnicity. The Chamber found that the failure of the respondent Party to fulfill its obligations under the law did not amount to differential treatment toward the applicants, and thus that no discrimination on the ground of national origin against the applicants could be established.

Article 6 of the Convention

The Chamber found that, as the case primarily raised issues under Article 1 of Protocol No. 1, and in light of the findings it made in respect of that Article, and also in respect of Article 8, it was not necessary for it to examine the case under Article 6, which guarantees the right to a fair and public hearing.

Article 9 of the Convention

The Chamber found that, as it is possible at all times, except during military exercises, to enter the area of the combat training centre and to visit the churches and cemeteries in the area, which are protected by embankments, and given its findings under Article 1 of Protocol No. 1 and in respect of Article 2 of Protocol No. 4, it was not necessary to examine the case separately under Article 9, which guarantees freedom of religion.

Remedies

The Chamber ordered the Federation to decide either to pursue the expropriation in regard to the property of each individual applicant in accordance with the relevant law, or not to pursue the planned expropriations, returning the property to the applicants and compensating them for all damage that has arisen from its actions which led to the violations of the applicants' rights; and in either case, to take steps to comply with the consequences of its decision and to make available funds for the necessary compensation of the applicants.

The Chamber also ordered the Federation to pay to each of the ten applicants KM 5,000 as compensation for non-pecuniary damages; and to pay to the applicants Nikola (Riste) Hajder, Zdravko Radičić and Pane Šavija KM 300-400 as compensation for travel expenses to attend the hearings of the Chamber.

Decision adopted 3 September 2001

Decision delivered 7 September 2001

Case No.:	CH/99/3196
Applicant:	Avdo and Esma PALIĆ
Respondent Party:	Republika Srpska
Date Delivered:	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. As of the date of the Chamber's consideration, 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, Article 1 of which 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/Concurring Opinions

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(2), and decided to reject the request for review.

Decision adopted 8 March 2001

Case No.:	CH/00/4116, CH/00/4117, CH/00/4077 and CH/00/4115
Applicant:	Bisera SPAHALIĆ, Mustafa SPAHALIĆ, Avdo TOSKIĆ and Adil UŠANOVIĆ
Respondent Party:	Bosnia and Herzegovina and Republika Srpska
Date Delivered:	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 north-eastern 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 applicants was reinstated into his apartment by the Brčko District in 2000. The remaining applicant was reinstated into his apartment by the Ministry for Refugees and Displaced Persons of the Republika Srpska in 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. 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 after the signing of the Memorandum of Understanding on 19 September 2000 and concerning allegations arising under Articles 6 and 13 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, apart from the proceeding brought by one applicant, unsuccessful. 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 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 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, 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, 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

Case No.:	CH/00/4889
Applicant:	The Islamic Community in Bosnia and Herzegovina
Respondent Party:	Republika Srpska
Other Title:	Jakeš Cemetery
Date Delivered:	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 ("Institute") in Garevac in the Modriča Municipality buried the remains of deceased non-Muslim patients from the Institute in the Muslim Cemetery in Vukosavlje-Jakeš, which is situated on land owned by the Islamic Community in Bosnia and Herzegovina. The Institute also allegedly removed the remains of deceased Muslims previously buried in the Cemetery.

Admissibility

Since the Institute 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(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

As of 31 December 2001, the decision on request for review had not been decided.

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 ("first apartment") in Tešanj, which was allocated to her by her employer. Later, the applicant moved from the first apartment into another apartment ("second 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 ("Municipal Department") 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 issued a procedural decision allowing the applicant's re-instatement into that apartment. On the same day, the Municipal Department also issued a decision annulling its previous decision of 16 February 2000 and terminating 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 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 of the annulment of the Municipal Department decision of 20 June 2000 on the use of the second apartment.

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. 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 and Article 1 of Protocol No. 1.

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/Concurring Opinions

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

Case No.:	CH/00/5480
Applicant:	Aziz DAUTBEGOVIĆ and 51 Other Villagers from Duge
Respondent Party:	Federation of Bosnia and Herzegovina
Date Delivered:	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 the order was withdrawn.

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 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 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(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

Case No.:	CH/00/6143 and 6150
Applicant:	Mara TURUNDŽIĆ and Smiljka FRANČIĆ
Respondent Party:	Federation of Bosnia and Herzegovina
Date Delivered:	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 Commission for Real Property Claims ("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 Commission for Real Property Claims 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. 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 15 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

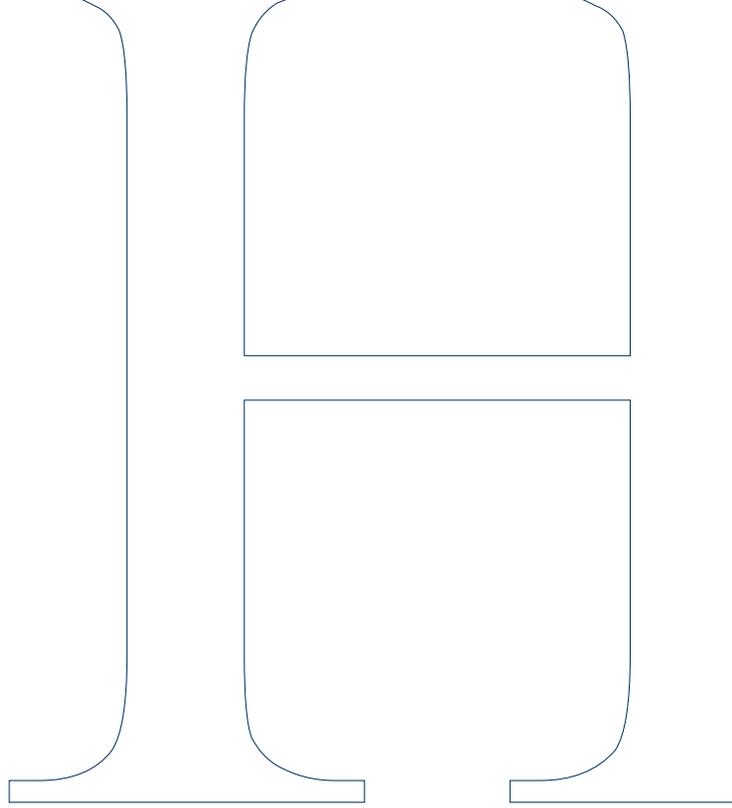
For the same reasons as given in the context of its examination of the case under Article 8, the Chamber found that the failure of the competent administrative organ to decide upon the applicant's requests was contrary to the law, and thus that there was a violation of their right to peaceful enjoyment 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



H Contributions and Expenses in 2001

HUMAN RIGHTS CHAMBER VOLUNTARY CONTRIBUTIONS IN 2001

Financial contributions

Donor	Date of receipt	Amount	Amount KM
*European Commission	8-Feb-01	615,000 EURO	1,202,738
Switzerland	29-Mar-01	17,761 USD	39,011
Canada	7-Jun-01	47,960 EURO	93,802
United States (2001/2002)	7-Jun-01	558,492 EURO	1,092,315
United Kingdom - through Council of Europe	6-Aug-01	14,315 EURO	27,998
*European Commission	14-Sep-01	492,000 EURO	962,268
United Kingdom - through Council of Europe	27-Nov-01	13,974.37 EURO	27,331
**Bosnia and Herzegovina	10-Dec-01	56,345 KM	56,345
Norway	27-Dec-01	18,562 USD	41,753
**Bosnia and Herzegovina	21-Mar-02	43,653 KM	43,653
TOTAL KM			3,587,214

* The total amount of the EC Contract is 1,250,000 EURO for the period 01 January 2001 - 31 March 2002

** Bosnia and Herzegovina allocated 100,000 KM in its State Budget for the Chamber for 2001

Other contributions in 2001

Donor	Period	Nature of donation
Bosnia and Herzegovina	Jan-Dec 01	office space in Presidency building
Germany	Jan-Dec 01	secondment of Lawyer
Netherlands	Apr-Dec 01	secondment of Lawyer
United States	Jan-Dec 01	secondment of Executive Officer and three Lawyers

HUMAN RIGHTS CHAMBER SUMMARY OF 2001 EXPENSES

Items	Actual Expenses (KM)
Members' costs	1,442,004
Staffing costs	1,018,521
Equipment	77,837
Office Supplies	70,024
Services, utilities and equipment maintenance	250,312
Outreach activities (including publications)	21,133
Rental of office space (Banja Luka)	26,400
Additional authorised international travel	5,287
Recruitment, staff training and development	1,666
Unforeseen expenditures	7,109
TOTAL KM	2,920,293