DECISION ON ADMISSIBILITY AND MERITS

DELIVERED ON 14 JANUARY 1998

in

CASE No. CH/96/27

Rifat BEJDIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 2 December 1997 with the following members present:

Michèle PICARD, President
Jakob MÖLLER, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Giovanni GRASSO
Miodrag PAJIĆ
Manfred NOWAK
Michele PICARD
Vitomir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Acting Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of the Application by Rifat BEJDIĆ against the Republika Srpska, registered under Case No.CH/96/27;

Has adopted the following Decision on the admissibility and merits of the case under Article VIII paragraph 2 and Article XI of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rules 52, 57and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak descent. He is the owner of a house located at Braće Odića street 126/a in Banja Luka. In August 1995 the applicant's son and his family were forcibly evicted from the first floor of the house where they lived, by a Mr. B.S.. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which ordered the eviction of Mr B.S. Several attempts were made to execute its decision but without results because the police did not take any action to assist court officials. The case concerns non-enforcement of the court decision and raises issues under Article 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The case was referred to the Chamber by decision of the Human Rights Ombudsperson for Bosnia and Herzegovina (hereinafter "the Ombudsperson") dated 20 November 1996, taken under Article V paragraph 5 of the Human Rights Agreement (hereinafter "the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

3. The Chamber considered the case on 21 March 1997 and decided under Rule 49 (3) (b) of its Rules of Procedure to give notice of the application to the Republika Srpska, as respondent Party, and to invite it to submit written observations on the admissibility and merits of the application. The respondent Party submitted its observations by letter dated 24 April 1997. The applicant submitted observations in reply on 20 June 1997 and by letter of 9 July 1997 the Ombudsperson also submitted observations in reply.

4. On 3 September 1997 the Chamber considered this and two other cases, Blentić and M.J. v. Republika Srpska, which raised similar issues. It decided to hold a public hearing on the admissibility and merits of the three cases. The hearing was held in Sarajevo on 8 October 1997. The applicant was represented by Mr Semko Bejdić. The respondent Party was represented by its Agent, Mr Stevan Savić. The Ombudsperson was represented by Ms Simona Granata, Deputy Ombudsperson, Mrs Valerija Šaula, Senior Legal Expert, and Mr Zlatko Kulenović, Senior Legal Expert.

5. The Chamber deliberated on the merits of the case on 9 October and 2 December 1997. On 2 December 1997 it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The Facts of the Case

6. The facts of the case as they appear from the parties' submissions and the documents in the case file are not generally in dispute and may be summarised as follows.

7. The applicant is the owner of a house located at Braće Odića Street 126 A in Banja Luka. The applicant occupies the ground floor of the house as his home. Until they were evicted the applicant's son, Mr Semko Bejdić, lived in a separate apartment on the first floor of the house together with his wife and two daughters.

8. On or about 15 August 1995 the wife and two children of Mr Semko Bejdić were forcibly evicted from their accommodation in the house by a Mr Stevo Babić. According to the applicant, Mr Babić is a policeman from Glamoč. He came to the house accompanied by a number of other persons, armed and in police uniform, and forced the family to leave. The wife of Mr Semko Bejdić called the local police. A patrol came to the scene and told her to leave. At the time of the eviction Mr

Semko Bejdić was absent performing a compulsory work obligation. He returned in September 1995 and learned then of the eviction. Since the eviction he and his family have been living in a garage or outhouse belonging to a friend.

9. The applicant instituted civil proceedings against Mr Babić in the Court of First Instance in Banja Luka, seeking restoration of possession of the first floor apartment. The action was defended by Mr Babić, who claimed that he had moved into the apartment with the applicant's consent. On 5 February 1996 the Court of First Instance, having heard the parties, issued a judgement ordering Mr Babić to transfer the first floor apartment into the possession of the applicant within fifteen days under threat of enforced performance. It refused as ill-founded a request by the applicant for a provisional order that Mr Babić should move out at once or within twenty- four hours.

10. Mr Babić appealed against the judgement to the Court of Appeal in Banja Luka. On 27 March 1996 the Court of Appeal refused the appeal. The Court found that the applicant had proved that he was the owner of the apartment, that it was not contested that Mr Babić had actual control over the apartment and that Mr Babić had not shown that there was any legal basis for his using the building and that the applicant was therefore entitled to recover possession under Article 37 paragraph 1 of the Law on Basic Legal Ownership Relations (SL SFRY Nos. 6/80 and 30/90). The Court of Appeal rejected an argument by Mr Babić to the effect that the decision of the Court of First Instance was contrary to provisions of the Decree with Force of Law for the Resettlement of Refugees (SL R S No. 19/95) under which surplus residential space was to be allocated to refugees. It pointed out that under the Decree the defining of surplus space should be done by the Commissions established for that purpose and that it should be allocated by the Municipal Presidency. No written proof that these procedures had been followed had been submitted and the argument was therefore ill-founded. The Court also held that even on the assumption that Mr Babić had entered the apartment with the consent of the applicant, as he claimed, this would not be a valid defence to the applicant's claim for return of the apartment.

11. On 3 May 1996 the Court of First Instance issued a decision on execution requiring Mr Babić to transfer the apartment at once into the possession of the applicant. Mr Babić did not comply with this order. Thereafter the Court issued a number of executory conclusions providing for the implementation of the Court's decision by transfer of the property by a court official with the help of the public security service. In particular executory conclusions were issued scheduling the eviction of Mr Babić for 31 May 1996, 18 July 1996, 26 September 1996 and 10 April 1997. According to the applicant a total of six attempted evictions on the basis of the court order took place. The first attempted eviction, on 31 May 1996, failed because about thirty police from Glamoč assembled at the apartment in support of Mr Babić. They were uniformed and armed and adopted a threatening attitude. The local police, from Banja Luka, took no action to assist the court official to carry out the eviction. A similar situation arose at the subsequent attempted evictions. On the second occasion, on 18 July 1996, Mr Babić agreed that he would leave the apartment voluntarily in thirty days, but he did not do so.

12. On 23 September 1996 the Commission for the Accommodation of Refugees and Administration of Abandoned Property issued a decision allocating the apartment to Mr Babić for temporary use under Articles 6 and 17 of the Law on the Use of Abandoned Property (SL R.S. 3/96). It was stated that the allocation would last until Mr Babić was provided with other appropriate accommodation. In the reasons for the decision it was stated that Mr Babić had submitted a request for accommodation to the Commission on 3 March 1996, that on the basis of an act of the Commission dated 20 August 1996 it had been established that the applicant, as owner of the property, had surplus housing space available, and that on the basis of an act of the Ministry of Refugees and Displaced Persons dated 29 August 1996 it had been established that the applicant had not complied with his obligations relating to the rationalisation of surplus housing space.

13. On 26 September 1996 Mr Babić handed the decision of the Commission to the court official at the attempted eviction. The official's minutes of the attempted eviction record that it could not be carried out because too many people were present. On 3 October 1996 the applicant appealed against the decision of the Commission to the Ministry of Refugees and Displaced Persons. He has received no response to this appeal.

14. The local police did not attend the attempted eviction on 10 April 1997, which was also unsuccessful. As at the date of the hearing before the Chamber, the applicant had not succeeded in enforcing the court order or otherwise recovering possession of the apartment.

B. Relevant Domestic Law

15. The above-mentioned Law on the Use of Abandoned Property (SL R.S. 3/96) came into force on 28 February 1996. The Law provides for the use of abandoned property by refugees and displaced persons (Article 1). Article 6 of the Law provides for decisions on the allocation of abandoned and other property to be made by Commissions for the Accommodation of Refugees and Administration of Abandoned Property established under the Law. An appeal can be made to the Ministry of Refugees and Displaced Persons against such a decision within fifteen days of receipt of the decision.

16. Article 11 of the Law provides for the accommodation of refugees and others in abandoned or empty properties. Article 17 provides that if the persons in question cannot be accommodated in properties referred to in Article 11, temporary accommodation can be allocated in property in which there is accommodation in excess of fifteen square metres per family member. Such temporary allocation of property lasts until the user of the accommodation is allocated other suitable accommodation.

IV. FINAL SUBMISSIONS OF THE PARTIES

A. The Applicant

17. The applicant submits that his human rights have been violated by his being deprived of his property and through the non-enforcement of the court decision.

B. The respondent Party

18. The respondent Party claims that the applicant did not exhaust remedies at his disposal as he did not commence an administrative action before the Supreme Court of the Republika Srpska in respect of the non-response of the Ministry of Refugees and Displaced Persons to his appeal against the Decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property. It accordingly suggests that the case should be declared inadmissible under Article VIII paragraph 2 (a) of the Agreement.

C. The Ombudsperson

19. The Ombudsperson submits that the failure of the authorities to enforce the judgement of the Court of First Instance in Banja Luka and the subsequent executory conclusions ordering the eviction of Mr. Babić violated the applicant's rights under Articles 6 and 8 of the European Convention and Article No. 1 of Protocol No. 1 to the Convention.

V. OPINION OF THE CHAMBER

A. Admissibility

20. Before considering the case on its merits the Chamber must decide whether to accept the case taking into account the admissibility criteria set out in Article VIII paragraph 2 of the Agreement.

21. The respondent Party has suggested that the Chamber should not deal with the case since the applicant has failed to exhaust the remedies available to him in the Republika Srpska. It points out in particular that the applicant's appeal to the Ministry of Refugees and Displaced Persons is still pending and since the Ministry has not responded to that appeal within two months the applicant could appeal to the Supreme Court on the basis of the silence of the administration. The Ombudsperson has submitted that this remedy is not one which the applicant should be required to exhaust since the Supreme Court would most probably apply the provisions of the Law on the Use of Abandoned Property and that the applicant's prospects of success are severely limited.

22. The Chamber has considered the respondent Party's argument in the light of paragraph 2 (a) of Article VIII of the Agreement, which, so far as relevant, provides as follows:

> "2. The Chamber shall decide which applications to accept.....In so doing the Chamber shall take into account the following criteria:
>
> > (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted....."

23. In relation to the rule concerning exhaustion of domestic remedies in Article 26 of the Convention, the European Court of Human Rights, in the case of Akdivar v. Turkey, has stated the following:

> "Under Article 26 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness....." (Akdivar v. Turkey, Judgement of 16 September 1996, para. 66).

The Court also stated that in applying the rule it is necessary to "take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants" (*ibid* para. 69). These principles should also be taken into account, in the Chamber's opinion, in the application of the criterion concerning exhaustion of remedies in Article VIII paragraph 2 (a) of the Agreement.

24. The Chamber notes that in the present case the applicant obtained a judgement against Mr Babić giving him the right to re-obtain possession of the apartment and that he made repeated attempts to enforce the judgement without success. The applicant has thus had "normal recourse" to the court remedy available to him to restore possession of the apartment, but the remedy in question has proved to be ineffective in practice. In so far as the applicant's complaint relates to the non-enforcement of the court decision during the period prior to the issue, on 23 September 1996, of the administrative decision allocating the apartment to Mr Babić, no further remedy is available to him. In so far as it relates to his inability to regain possession of the apartment since the administrative decision was taken the Chamber notes that his appeal to the Ministry is still pending and that it is also open to him to apply to the Supreme Court on the basis of the silence of the administration. However even if the applicant succeeded, through use of these appeal processes, in obtaining a remedy which rendered ineffective the decision allocating the apartment to Mr Babić, it would still be necessary for him to enforce Mr Babić's removal from the apartment. No effective remedy appears to be available to enable him to do that, however.

25. In these circumstances the Chamber finds that it is not established with sufficient certainty that any effective remedy is in practice available to the applicant. The Chamber therefore finds that there is no obstacle to the admissibility of the application under Article VIII paragraph 2 (a) of the Agreement.

26. The Chamber finds no other ground for declaring the application inadmissible under Article VIII paragraph 2 of the Agreement. It points out however that it has no competence under the Agreement to consider whether any violation of the applicant's human rights occurred before the Agreement came into force (see Case No. CH/96/1, Matanovic v. Republika Srpska, Decision on Admissibility dated 13 September 1996). It concludes that the application is admissible and should be examined on its merits in so far as it relates to violations of the applicant's human rights which are alleged to have occurred since the Agreement came into force on 14 December 1995.

B. The Merits

27. Under Article XI of the Agreement the Chamber must, in the present decision, address the question whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement. In terms of Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms" including the rights and freedoms provided for in the Convention. The Chamber will therefore consider whether the failure of the authorities to enforce the court order obtained by the applicant has involved a breach of his rights under the Articles of the Convention which have been invoked in the proceedings.

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

28. The Chamber has first considered the case under Article 1 of Protocol No. 1 to the Convention, which provides as follows:

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

29. The European Court of Human Rights has held that this provision "guarantees in substance the right of property" and "comprises three distinct rules". The first rule, in the first sentence of Article 1, lays down the general principle of the peaceful enjoyment of possessions. The second rule, in the second sentence, covers deprivation of possessions and makes it subject to certain conditions. The third rule, in the second paragraph, concerns the State's right to enforce laws controlling the use of property. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property (see e.g. Scollo v. Italy, 1995 Series A No. 315 para. 26). Where a measure affecting property is not within the ambit of either the second or the third rule, it is necessary to consider whether there has been a violation of the first rule, for which purpose it must be determined "whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights" (Sporrong & Lonnroth v. Sweden, 1982 Series A No. 52 para. 69).

30. In deciding which of these rules is applicable in the present case the Chamber notes that there are two separate aspects to the case. In the first place the case concerns an alleged failure by the authorities to protect the applicant against a continuing interference with his property rights by an individual, Mr Babić. Initially at least that interference was unlawful. In the Chamber's opinion this aspect of the case, which does not involve either an expropriation by public authority or a control of use of the property, should be examined under the first, general, rule in Article 1. The second aspect of the case relates to the alleged interference with the applicant's property rights resulting from the administrative decision to allocate the apartment to Mr Babić for temporary use. In the Chamber's opinion such allocation of the property can be regarded as a control of the use of property and should be examined under the second paragraph of Article 1.

31. Looking first at the alleged failure of the authorities to protect the applicant's property rights against interference by Mr Babić, the Chamber observes that the general rule in the first sentence of Article 1 may, like other Convention guarantees, give rise to positive obligations on the authorities to

provide effective protection for the individual's rights (see e.g. Marckx v. Belgium, 1979 Series A No. 31, para. 31; Airey v. Ireland, 1979 Series A No. 32, para. 32; X & Y v. Netherlands, 1985 Series A No. 91, paras. 23 *et seq*; Velosa Barreto v. Portugal, 1995 Series A No. 334, para. 23; Application No. 20357/92, Whiteside v. United Kingdom, 76A DR p. 80). The Chamber notes, furthermore that it is implicit in the Court's Judgement in the case of Scollo v. Italy (*sup. cit.*) that such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction.

32. In the Chamber's opinion the obligation effectively to secure respect for a person's property therefore implies that there must be effective machinery for protecting it against unlawful interference of the kind which the applicant has suffered. In particular there must be effective machinery for obtaining and enforcing court orders restoring possession where a person's property has been unlawfully occupied by another person. In the present case the applicant has been deprived for over two years of possession and control of the part of his property which his son and family formerly occupied as their home. The police have given no assistance to court officials in repeated attempts to enforce the court order for the eviction of Mr Babić, starting on 31 May 1996 and continuing even after the administrative decision allocating the property to Mr Babić.

33. The Chamber recognises that the authorities responsible for carrying out an eviction may face a difficult task if they are obstructed by people opposed to the eviction, and that they may legitimately find it necessary in some circumstances to delay taking action for reasons of public order. They are bound however to take steps to deal with such a situation. In the context of Article 11 of the Convention the European Court of Human Rights has held that a State is under a positive obligation to take reasonable and appropriate measures to protect lawful demonstrations from violence by counter demonstrators, although the authorities cannot guarantee a successful outcome and have a wide discretion as to the means to be used, (Plattform Arzte fur das Leben v. Austria, 1988 Series A No. 139 paras. 30 - 34). In the Chamber's opinion in the situation which arose in the present case, Article 1 of Protocol No. 1 to the Convention imposed a similar positive obligation on the public authorities to take effective, reasonable and appropriate measures to deal with the difficulties posed by the assembly of people obstructing the enforcement of the eviction.

34. In deciding what measures should be taken it is necessary to take into account that the case concerns the applicant's attempts to recover property which was being used by members of his family as their home. However there is no evidence that the police ever took any action at all to assist the court officials or to prevent the systematic obstruction of their work either before or after the administrative decision allocating the apartment to Mr Babić. The information before the Chamber indicates that they were entirely passive at each eviction attempt despite the fact that the Law on Executive Procedure in force in the Republika Srpska provides for the police to support the authorities responsible for the execution of court decisions. They did not attend at all at the eviction scheduled for April 1997. Furthermore no attempt has been made to prosecute those responsible for obstructing the execution of the order of the court, although this would have been possible under domestic law. In the Chamber's opinion such a situation is incompatible with the rule of law and involves a breach of Article 1 of Protocol No. 1 to the Convention by the respondent Party.

35. As to the administrative decision allocating the property to Mr Babić the Chamber first notes that the parties appeared to be in agreement that this decision did not affect the validity of the court order obtained by the applicant, and that the court issued at least one executory conclusion after the administrative decision had been taken. However according to the respondent Party the position was that if the court order had been enforced against Mr Babić, he would then have been able to seek enforcement of the administrative decision against the applicant. The administrative decision cannot therefore be regarded as ineffective but constitutes a control of use of the applicant's property which must be examined under the second paragraph of Article 1 of the Protocol (see para. 30 above).

36. In examining a measure under the second paragraph of Article 1 the Chamber must consider whether there was a reasonable relationship of proportionality between the aim sought to be realised and the means employed or, in other words, whether a fair balance has been struck between the demands of the general interest and the interests of the individual concerned (see e.g. AGOSI v. United Kingdom, 1986 Series A No. 108 para. 52).In determining whether such a balance has been struck one relevant factor may be the existence of adequate procedural safeguards for the individual concerned (*ibid* para. 55).

37. In the Chamber's opinion the aim of the legislation under which the administrative decision was taken, namely to provide temporary accommodation for refugees in houses where there is surplus accommodation, can in principle be regarded as a legitimate one. In the present case, however, the administrative authority appears to have taken no account of the fact that the accommodation in question had been occupied by the applicant's son and his family who had been forcibly and unlawfully evicted by Mr Babić. In allocating the property to him it endorsed his unlawful action. It also appears to have given no opportunity to the applicant to make representations about the matter. In these circumstances it cannot be said that a fair balance was struck between the general interest and the applicant's right to use his property for the accommodation of his family. The Chamber therefore finds that the decision in question violated Article 1 of Protocol No. 1 to the Convention.

38. The Chamber therefore concludes that the applicant's rights under Article 1 of Protocol No. 1 to the Convention have been violated by reason of the failure of the authorities to enforce the judgement in the applicant's favour and by the allocation of the apartment to Mr Babić.

2. Article 8 of the Convention

39. The Ombudsperson has also submitted that the case involves a violation of the applicant's rights under Article 8 of the Convention, which guarantees *inter alia* the right to respect for home. Having found that the applicant's rights under Article 1 of Protocol No. 1 to the Convention, as owner of the property in question, have been infringed, and taking account of the fact that the applicant has not himself been evicted, the Chamber finds it unnecessary in the particular circumstances to consider whether there was also a violation of his right to respect for his home arising from the same facts.

3. Article 6 of the Convention

40. Article 6 of the Convention, so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations….everyone is entitled to a fair and public hearing within a reasonable time by (a) ….tribunal…"

The applicant and the Ombudsperson suggest that the applicant's rights under this provision have been violated by reason of the failure to enforce the court order.

41. The European Court of Human Rights has held that Article 6 applies to enforcement proceedings following on the decision of a tribunal within its scope (Scollo v. Italy, 1995 Series A No. 315C; Hornsby v. Greece, Judgement of 19 March 1997). In particular in the Hornsby case it pointed out that Article 6 embodies the "right to a court" and stated that:

> "….that right would be rendered illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should prescribe in detail procedural guarantees afforded to litigants…..without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention….Execution of a judgement given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6; moreover the Court has already accepted this principle in cases concerning the length of proceedings" (para. 40 of the Judgement).

42. In the Scollo case the Court found that prolonged delay in the enforcement of a judgement giving the applicant entitlement to the possession of an apartment had involved a breach of Article 6 of the Convention, pointing out that "the inertia of the competent administrative authorities" engaged the responsibility of the State (paras. 44 - 45 of the Scollo Judgement). In the Hornsby case it found that by failing over a period of five years to take the necessary measures to comply with a judicial

decision the relevant authorities had "deprived the provisions of Article 6 (1) of the Convention of all useful effect" and that there was therefore a breach of that Article (para. 45 of the Hornsby Judgement). In the Chamber's opinion the situation is similar in the present case, where the police have been passive despite the obligation on them to assist in the execution of the court decision. The inertia of the competent authorities thus involves a breach of the applicant's right to a determination of his civil rights within a "reasonable time" and has also deprived Article 6 (1) of all useful effect.

43. The Chamber therefore finds that there has been a violation of the applicant's rights under Article 6 (1) of the Convention.

VI. REMEDIES

44. Under Article XI paragraph 1 (b) of the Agreement the Chamber must address the question what steps shall be taken by the respondent Party to remedy the breaches of the Agreement which it has found. In the present case the Chamber considers it appropriate to order the respondent Party to revoke the administrative decision allocating the apartment to Mr Babić and to take effective measures to restore to the applicant his possession of the apartment in question. It will also order the respondent Party to report to it before 14 March 1998 on the steps taken by it to comply with this order. The Chamber will also reserve to the applicant the right to apply to it before 14 April 1998 for any monetary relief or other redress he wishes to claim.

VII. CONCLUSIONS

45. For the above reasons the Chamber **decides** as follows:

- 1. By eleven votes against two that the failure of the authorities of the respondent Party to enforce the court decision in the applicant's favour involves a violation by the respondent Party of the applicant's rights under Article 1 of Protocol No. 1 to the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;

- 2. By ten votes against three that the Decision of 23 September 1996 of the Commission for the Accommodation of Refugees and Administration of Abandoned Property to allocate the property in question to Mr Babić also involved a violation by the respondent Party of the applicant's rights under Article 1 of Protocol No. 1 to the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;

- 3. By eight votes against five that it is unnecessary to examine the applicant's complaints on the basis of Article 8 of the Convention;

- 4. By eleven votes against two that the failure of the authorities to enforce the court order also involves a violation by the respondent Party of the applicant's rights under Article 6 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;

- 5. By eleven votes against two to **order** the respondent Party to revoke the aforementioned Decision of 23 September 1996 allocating the property to Mr Babić;

- 6. By eleven votes against two to **order** the respondent Party to take effective measures to restore to the applicant possession of the apartment referred to in the relevant orders of the Court of First Instance in Banja Luka;

- 7. By eleven votes against two to **order** the respondent Party to report to it before 14 March 1998 on the steps taken by it to comply with the above orders;

- 8. By eleven votes against one to **reserve** to the applicant the right to apply to it before 14 April 1998 for any monetary relief or other redress he wishes to claim.

(Signed) Peter KEMPEES
Acting Registrar of the Chamber

(Signed) Michèle PICARD
President of the Chamber