HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 12 JUNE 1998

in

CASES No. CH/96/2, 4, 5, 6, 7, 11, 12, 13, 14, 19, 20, 24, 25 and 26
and **CH/97/32 and 33**

Vlado PODVORAC, Stevo MOMČILOVIĆ, Velislav RIOROVIĆ, Miloš JANJEVIĆ, Mirjana VRANČIĆ, Josip GALOVIĆ, Smail ALIJAGIĆ, D. Đ., Husnija FETAHAGIĆ, B.K., Nikola NOKOVIĆ, Špiro JOVIŠEVIĆ, Ljubomir GLUŠAC, M.H., T.B. and J.S.

against

Bosnia and Herzegovina

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session 14 May 1998 with the following Members present:

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

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of the Application by Vlado PODVORAC (Case No. CH/96/2), Stevo MOMČILOVIĆ (Case No. CH/96/4), Velislav RIOROVIĆ (Case No. CH/96/5), Miloš JANJEVIĆ (Case No. CH/96/6), Mirjana VRANČIĆ (Case No. CH/96/7), Josip GALOVIĆ (Case No. CH/96/11), Smail ALIJAGIĆ (Case No. CH/96/12), D. Đ. (Case No. CH/96/13), Husnija FETAHAGIĆ (Case No. CH/96/14), B.K. (Case No. CH/96/19), Nikola NOKOVIĆ (Case No.

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CH/96/20), Špiro JOVIŠEVIĆ (Case No. CH/96/24), Ljubomir GLUŠAC (Case No. CH/96/25), M.H. (Case No. CH/96/26), T.B. (Case No. CH/97/32) and J.S. (Case No. CH/97/33) against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, submitted on 3 and 15 July, 25, 27 and 30 September, 23 October, 8 November and 19 December 1996 by the Human Rights Ombudsperson for Bosnia and Herzegovina under Article V paragraph 5 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and registered under Case No. CH/96/2, 4, 5, 6, 7, 11, 12, 13, 14, 19, 20, 24, 25 and 26 and CH/97/32 and 33;

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

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina. They all contracted in late 1991 and in 1992 to buy from the Yugoslav National Army (the "JNA") apartments which they occupied in Sarajevo. The contracts were annulled by legislation passed shortly after the General Framework Agreement for Peace in Bosnia and Herzegovina came into force in December 1995. The applicants complain that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention") and also allege various other violations of their human rights arising from related matters. The respondent Parties in the applications are the State and the Federation of Bosnia and Herzegovina.

2. The applications were all referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina (the "Ombudsperson") under Article V paragraph 5 of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement. In her decisions referring the cases to the Chamber she found that they raised issues under Articles 6 and 13 of the Convention and under Article 1 of Protocol 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The Ombudsperson referred the Podvorac application to the Chamber on 3 July 1996, the Momčilović, Riorović, Janjević and Vrančić applications on 5 July 1996, the Galović application on 25 September 1996, the Alijagić application on 27 September 1996, the D.Đ. and Fetahagić applications on 30 September 1996, the B.K. and Noković applications on 23 October 1996, the Jovišević, Glušac and M.H. applications on 8 November 1996 and the T.B. and J.S. applications on 19 December 1996. The Chamber considered the Podvorac, Momčilović, Riorović, Janjević and Vrančić applications on 15 August 1996, on 4 February 1997 and on 1 December 1997 and the Galović, Alijagić, D.Đ., Fetahagić, B.K., Noković, Jovišević, Glušac, M.H., T.B. and J.S. applications on 13 May 1997 and 1 December 1997. Mr. Janjević is represented by Mrs. Marina Janjević and Mr. Noković is represented by Mrs. Joka Noković. All the other applicants are unrepresented. The applicants in the cases No. CH/96/13, 19 and 26 and CH/97/32 and 33 indicated that they object to their identity being disclosed to the public (Rule 46 paragraph 2 (d) of the Chamber's Rules of Procedure).

4. With the exception of the application CH/97/32 (T.B.) which is directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, the applications were all initially directed either against Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina. The Chamber considered, however, that the applicants' complaints raised issues which might engage the responsibility of both the State and the Federation of Bosnia and Herzegovina. It therefore decided to treat all the cases as being directed against both the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina (See the Decision in the cases of Medan, Bastijanović and Marković v. (1) Bosnia and Herzegovina and (2) The Federation of Bosnia and Herzegovina, Case No. CH/96/3, 8 and 9, paragraphs 28-30 and 44-47).

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5. The Chamber decided to request both the State and the Federation of Bosnia and Herzegovina, as respondent Parties, to submit written observations on the admissibility and merits of the cases. Several time limits were set for the submission of observations, the last of which expired on 9 January 1998. Neither respondent Party filed any submissions. Accordingly, on 5 April 1998 the Chamber decided to proceed to a decision in the cases (Rule 56).

6. The Chamber deliberated on the admissibility and the merits of the cases on 5 April 1998. Under Rule 34 of its Rules of Procedure, it decided to join the applications and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

7. The facts of the cases as they appear from the applicants' submissions and the documents in the case file are not in dispute and may be summarised as follows.

A. The relevant National Law

8. The apartments occupied by the applicants were all social property over which the JNA had jurisdiction. Social property was property which was considered to belong to the society as a whole. Each applicant held an occupancy right in his apartment. An occupancy right was a right, subject to certain conditions, to occupy an apartment on a permanent basis.

9. Each of the applicants contracted to purchase his apartment under the Law on Securing Housing for the Yugoslav Army (SL SFRJ No. 84/90). This was a Law of the Socialist Federal Republic of Yugoslavia ("the SFRJ"), which was passed in 1990 and came into force on 6 January 1991. In the following years a number of Decrees with force of law and laws were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina with the aim of regulating "social property issues" in general and social property over which the JNA had jurisdiction in particular (See the Chamber's decision in the cases of Medan, Bastijanović and Marković v. (1) Bosnia and Herzegovina and (2) The Federation of Bosnia and Herzegovina, Case No. CH/96/3, 8 and 9, paragraph 9-13). These included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (SL SRBH No. 4/92). Eventually, a Decree with force of law, issued on 3 February 1995 by the Presidency of the Republic (SL RBH 5/95), ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree came into force on 10 February 1995, the date of its publication in the Official Gazette. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (SL RBH 50/95) stating that contracts for the sale of apartments and other property concluded on the basis of *inter alia* the Law on Securing Housing for the JNA were invalid. This Decree came into force on the same day. It was adopted as a law by the Assembly of the Republic of Bosnia and Herzegovina and promulgated on 18 January 1996 (SL RBH 27/96).

10. The Decree of 22 December 1995 (adopted as law) also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a law to be adopted in the future. On 6 December 1997 a new law on the sale of apartments with occupancy right came into force (SL Fed BH 27/97). This law was amended by the Law of 23 March 1998 (SL Fed BH 11/98). Both laws did not affect the annulment of the contracts of the applicants in the present applications.

B. The Facts of the Individual Cases

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1. The case of Mr. Vlado PODVORAC

11. The applicant is a citizen of Bosnia and Herzegovina. He is a retired officer of the JNA and resides in an apartment at 36 Ivana Krndelja Street in Sarajevo ("the apartment"), over which he held an occupancy right. On 11 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 12 February 1992, the applicant paid 192.472 Yugoslavian dinars to the JNA for the apartment.

12. On 10 October 1994 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. On 10 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995, No. 5/95 (see paragraph 9 above). The Court's decision stated that no special appeal was allowed against it. The proceedings have remained adjourned since.

2. The case of Mr. Stevo MOMČILOVIĆ

13. The applicant is a citizen of Bosnia and Herzegovina. He is a retired civilian employee of the JNA and resides in an apartment at 19A Branilaca grada Street in Sarajevo ("the apartment"), over which he held an occupancy right. On 23 December 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 6 January 1992, the applicant paid 175.000 Yugoslavian dinars to the JNA for the apartment.

14. On 21 November 1994 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud I) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. On 2 April 1996 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995, No. 5/95 (see paragraph 9 above). On 3 April 1996 the applicant submitted an appeal to the High Court (Viši sud) of Sarajevo against this decision. On 20 May 1996 the High Court confirmed the decision of the Court of First Instance.

3. The case of Mr. Velislav RIOROVIĆ

15. The applicant is a citizen of Bosnia and Herzegovina. He is a civilian employee of the JNA and resides in an apartment at 1 Braće Ribara Street in Sarajevo ("the apartment"), over which he held an occupancy right. On 8 February 1992, the applicant paid 50.990 Yugoslavian dinars to the JNA for the apartment. On 12 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia.

16. On 19 October 1994 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. No action has been taken by the Court in relation to this request as far as the Chamber is aware.

4. The case of Mr. Milos Janjević

17. The applicant is a citizen of Bosnia and Herzegovina. He is a retired member of the JNA and resides in an apartment at Malta Street in Sarajevo ("the apartment"), over which he had an occupancy right. On 12 February 1992, the applicant paid 478.823 Yugoslavian dinars to the JNA for the apartment. On 13 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia.

18. On 14 February 1995 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. On 15 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995, No. 5/95 (see paragraph 9

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above). The Court's decision stated that no special appeal was allowed against it. The proceedings have remained adjourned since.

5. The case of Mrs. Mirjana VRANČIĆ

19. The applicant is a citizen of Bosnia and Herzegovina. She is a retired civilian employee of the JNA and resides in an apartment at 1/IX Braće Ribara Street in Sarajevo ("the apartment"), over which she had an occupancy right. On 23 December 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 26 December 1991, the applicant paid 160.782 Yugoslavian dinars to the JNA for the apartment.

20. On 19 October 1994 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that she was entitled to recognition as owner of the apartment and to entry in the land register as such. On 10 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995, No. 5/95 (see paragraph 9 above). The Court's decision stated that no special appeal was allowed against it. In May 1996 the applicant requested the Court of First Instance to continue the proceedings in her case. On 29 May 1996 the Court informed the applicant in writing that it would not consider doing so.

6. The case of Mr. Josip GALOVIĆ

21. The applicant is a citizen of Bosnia and Herzegovina. He is a retired civilian employee of the JNA and resides in an apartment at 23 Malta Street in Sarajevo ("the apartment"), over which he had an occupancy right. On 8 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 10 February 1992, the applicant paid 357.138 Yugoslavian dinars to the JNA for the apartment.

22. On 7 February 1995 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. On 10 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995, No. 5/95 (see paragraph 9 above). The Court's decision stated that no special appeal was allowed against it. There have been no developments in the case since that decision.

7. The case of Mr. Smail ALIJAGIĆ

23. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment at 19A Branilaca Sarajeva Street in Sarajevo ("the apartment"), over which he had an occupancy right. On 23 December 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. Between 31 December 1991 and 4 February 1992, the applicant paid 575.532 Yugoslavian dinars to the JNA for the apartment.

24. On 1 March 1994 the Court of First Instance (Osnovi Sud II) in Sarajevo decided not to follow the applicant's request to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. There have been no developments in the case since that request.

8. The case of Mr. D.Đ

25. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment at 48/4 Aleja Lipa Street in Sarajevo ("the apartment"), over which he had an occupancy right. On 10 February 1992, the applicant paid 208.982 Yugoslavian dinars to the JNA for the apartment. On 18 March 1992, the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia.

26. On 11 January 1995 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the

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apartment and to entry in the land register as such. No action has been taken by the Court in relation to this action but it appears from the Ombudsperson's Decision on Referral that the applicant has been orally informed that the proceedings are adjourned.

9. The case of Mr. Husnija FETAHAGIĆ

27. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment at 47/2 Aleja Lipa Street in Sarajevo ("the apartment"), over which he had an occupancy right. On 7 February 1992, the applicant paid 76.000 Yugoslavian dinars to the JNA for the apartment. On 28 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia.

28. On 6 January 1995 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. No action has been taken by the Court in relation to this action but it appears from the Ombudsperson's Decision on Referral that the applicant has been orally informed that the proceedings are adjourned.

10. The case of Mr. A.C.

29. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment at 18/1 Envera Šehovića in Sarajevo ("the apartment"), over which he had an occupancy right. On 30 October 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 3 February 1992, the applicant paid 114.217 Yugoslavian dinars to the JNA for the apartment.

30. On 3 April 1995 the applicant instituted civil proceedings in the Court of First Instance (Osnovi Sud II) in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to entry in the land register as such. On 26 April 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995, No. 5/95 (see paragraph 9 above). The Court's decision stated that no special appeal was allowed against it.

11. The case of Mr. Nikola NOKOVIĆ

31. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment 3 Milana Preloga in Sarajevo ("the apartment"), over which he had an occupancy right. On 30 October 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 24 January 1992, the applicant paid 76.315 Yugoslavian dinars to the JNA for the apartment.

32. It appears from the file that the applicant has never instituted any proceedings.

12. The case of Mr. Špiro JOVIŠEVIĆ

33. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment at 6/IV Grbavička in Sarajevo ("the apartment"), over which he had an occupancy right. On 24 December 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 7 January 1992, the applicant paid 114.217 Yugoslavian dinars to the JNA for the apartment.

34. On 27 December 1991 the contract was notarised by the Court of First Instance (Osnovi Sud I) in Sarajevo but the Court rejected the applicant's oral request to register the apartment in the Land Registry as his property.

13. The case of Mr. Ljubomir GLUŠAC

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35. The applicant is a citizen of Bosnia and Herzegovina. He is a retired civilian employee of the JNA and resides in an apartment at 106, Azize Šaćirbegović in Sarajevo ("the apartment"), over which he had an occupancy right. On 31 December 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. The applicant claims that he paid the full purchase price for the apartment within the time limit specified in the purchase contract. Although he was unable to provide documentation to this effect, the Chamber accepts that claim, which has not been disputed.

36. On 14 February 1992 the contract was notarised by the Court of First Instance (Osnovi Sud I) in Sarajevo.

14. The case of Mrs. M.H.

37. The applicant is a citizen of Bosnia and Herzegovina. She is retired from the JNA and resides in an apartment at 72 Čekaluša in Sarajevo ("the apartment"), over which she had an occupancy right. On 25 November 1991 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 6 December 1991, the applicant paid 192.741 Yugoslavian dinars to the JNA for the apartment.

38. On 6 December 1991 the contract was notarised by the Court of First Instance (Osnovi Sud I) in Sarajevo. There have been no developments in the case since that notarisation.

15. The case of Mr. T.B.

39. The applicant is a citizen of Bosnia and Herzegovina. He is retired from the JNA and resides in an apartment at 8A Grbavička Street in Sarajevo ("the apartment"), over which he had an occupancy right. On 29 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 12 February 1992, the applicant paid 35.500 Yugoslavian dinars to the JNA for the apartment.

40. It appears from the file that the applicant has never instituted any proceedings.

16. The case of Mr. J.S.

41. The applicant was a citizen of Bosnia and Herzegovina. He was retired from the JNA and resided in an apartment at 57 Grbavička in Sarajevo ("the apartment"), over which he had an occupancy right.

42. On 11 February 1992 the applicant concluded a purchase contract with the Federal Secretariat for National Defence of the Socialist Federal Republic of Yugoslavia. On 31 January 1992, the applicant paid 18.958 Yugoslavian dinars to the JNA for the apartment.

43. On 22 February 1992 the contract was notarised by the Court of First Instance (Osnovi Sud II) in Sarajevo.

44. On 26 March 1997 the applicant died. In her letter from 6 January 1998 the applicant's widow informed the Chamber that she wishes to pursue the proceedings before the Chamber.

IV. FINAL SUBMISSIONS OF THE PARTIES

A. The Applicants

45. Fifteen of the applicants (Applications No. CH/96/2, 5, 6, 7, 11, 12, 13, 14, 19, 20, 24, 25 and 26 and CH/97/32 and 33), including some who have not instituted any court proceedings (Applications No. CH/97/12, 20, 24, 25 and 26 and CH/32 and 33), submitted that the retroactive annulment of their purchase contracts and the (probable) adjournment of their civil proceedings in the

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courts under the Decree No. 5/95 (see paragraph 9 above) have involved the violation of their rights under Article 6 and 13 of the Convention and Article 1 of Protocol 1 to the Convention.

46. Seven applicants (Applications No. CH/96/2, 6, 12, 20 and 26 and CH/97/32 and 33) complain in addition that their rights under Article 13 have been violated. One applicant (Application No. CH/96/4) complains generally that his rights under Article 1 of Annex 6 to the Framework Agreement for Peace in Bosnia and Herzegovina have been violated.

B. The Respondent Parties

47. No submissions have been received from either the State of Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina.

C. The Ombudsperson

48. The Ombudsperson considers that the facts of six of the applications (Applications No. CH/96/11, 13, 14, 19, 24 and 25) raise issues under Article 6 of the Convention and Article 1 of Protocol 1 to the Convention and that the facts of the other ten applications (Applications No. CH/96/2, 4, 5, 6, 7, 12, 20 and 26 and CH/97/32 and 33) raise issues under the same Articles of the Convention and, additionally, under Article 13 of the Convention.

V. OPINION OF THE CHAMBER

49. Before giving its opinion on the admissibility and the merits of the case the Chamber takes note of the fact that one of the original applicants, Mr. J.S., has died during the proceedings before it. It notes that Article VIII paragraph 1 of the Annex 6 Agreement provides for it to examine applications presented on behalf of applicants who are deceased (see also the Chamber's Decision in the cases of Medan, Bastijanović and Marković v. (1) Bosnia and Herzegovina and (2) The Federation of Bosnia and Herzegovina, Case No. CH/96/3, 8 and 9, paragraph 26 with further references to the practice of the European Commission and the European Court of Human Rights in similar cases). In addition, the applicant's widow, who has a legal interest in the outcome of the case, has informed the Chamber of her wish to carry the application on. This is a further reason for deciding on the admissibility and the merits of the application of Mr. J.S. His widow is now to be regarded as the "applicant" in her late husband's stead.

A. Admissibility

50. Before considering the cases on their merits the Chamber must decide whether to accept the applications taking into account the admissibility criteria set out in Article VIII paragraph 2 of the Agreement.

51. The Chamber has to consider the admissibility of the applications 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 … ."

52. 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 and Others v. Turkey (Judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV) has stated the following:

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> "66. 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 (...).
>
> 67. However, there is (...) no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law" there may be special circumstance which absolve the applicant from the obligation to exhaust domestic remedies at his disposal." (Akdivar and Others v. Turkey, paragraphs 66 and 67)

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 applicant (*ibid* paragraph 69). These principles should 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 (see the Chamber's Decision in the Case of Mehmed Blentić v. Republika Srpska, Case No. CH/96/17, paragraph 19).

53. The Chamber observes that the Decree of 15 February 1992 (SL SRBH No. 4/92) provided for a temporary prohibition of the sale of socially owned property. Under the Decree of 3 February 1995 courts and other state authorities should adjourn proceedings relating to the purchase of "JNA apartments" and under the Decree of 22 December 1995 the contracts for the sale of these apartments were declared invalid (see paragraph 9 above).

54. The experience of those applicants who instituted court proceedings (namely Mr. Podvorac, Mr. Momčilović, Mr. Riorović, Mr. Janijević, Mrs. Vrančić, Mr. Galović, Mr. Alijagić, Mr. D.Đ, Mr. Fetahagić, Mr. A.C, and Mr. Jovišević) indicates that redress was not available through the Courts. Moreover, in one case where an applicant appealed against the First Instance decision to adjourn the proceedings (Mr. Momčilović) the High Court confirmed the decision in question. Accordingly the Chamber finds that the applicants did not have any effective remedies available to them and the question of their non-exhaustion does not arise.

55. Moreover, the Chamber notes that neither of the respondent Parties followed the invitation to submit observations on the application. This means that neither Party has argued that any "effective remedy" was available to the applicants for the purposes of Article VIII paragraph 2 (a) of the Agreement and that neither Party has raised any other objections to the admissibility of the applications under the criteria set out in Article VIII paragraph 2 of the Agreement.

56. The Chamber concludes that, especially in the light of the experience of those applicants who instituted proceedings, all the applications, including those where the applicants did not institute any proceedings, should be accepted as admissible under Articles 6 and 13 and Article 1 of Protocol 1 to the Convention and examined on the merits.

B. Merits

57. 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 recognised human rights and fundamental freedoms" including the rights and freedoms provided for in the Convention. The Chamber will therefore consider whether the annulment of the applicant's contracts and the compulsory adjournment of the applicant's civil actions constitutes a breach of the applicant's rights under Article I of the Agreement.

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

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58. The applicants all complain that the contracts which they entered into for the purchase of their apartments were annulled retroactively by the Decree issued on 22 December 1995, which was adopted as law on 18 January 1996. They allege the breach of Article 1 of Protocol No. 1 to the European Convention on Human Rights, which is in the following terms:

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

59. As to whether, at the time when the Decree came into force, the applicants had any rights under their contracts which constituted "possessions" for the purposes of Article 1, the Chamber refers to its Decision in the case of Medan and Others (See Medan, Bastijanović and Marcović v. (1) Bosnia and Herzegovina and (2) The Federation of Bosnia and Herzegovina, Case No. CH/96/3, 8 and 9, paragraph 33).

60. In two of the cases before the Chamber (CH/96/13 and 14) the validity of the contracts may be open to question in respect that in those cases the written contracts were entered into after the Decree of 15 February 1992 which imposed a temporary prohibition on sales under the Law on Securing Housing for the JNA, came into force (see paragraph 9 above). The Chamber notes, however, that in one of these cases the applicant had performed his obligations under the contract by paying the price before the Decree of 15 February 1992 came into force and questions may therefore arise as to whether there was a valid contract before that date. The validity of the Decree of 15 February appears also to be open to question since it prohibited contracts which were provided for in federal law, whereas Article 207 of the Constitution of the Socialist Federal Republic of Yugoslavia provided that republican and provincial statutes and other legislation "may not be contrary to federal statute". Finally the Chamber notes that the prohibition provided for in the Decree was a temporary one which expired in February 1993 and that the Decree was never adopted as law. Taking these factors into account, the Chamber does not consider it established that the contracts entered into by these two applicants were invalid, although they may be challengeable in the courts. Accordingly, and following its own precedent in the cases of Medan and others (loc. cit., paragraph 33) the contractual rights of the two applicants in question, although subject to some uncertainty as a result of the Decree in question, should nonetheless be regarded as "possessions" for the purposes of Article 1 of the Protocol.

61. There is no reason to doubt the validity of the contract entered into by the other applicants. The Chamber therefore finds that all the applicants had rights under their contracts which were "possessions" for the purposes of Article 1 of the Protocol. The effect of the Decree of 22 December 1995 (adopted as law) was to annul those rights and each applicant was therefore "deprived of his possessions" by the Decree. It is accordingly necessary for the Chamber to consider whether these deprivations were justified under Article 1 of the Protocol as being "in the public interest" and "subject to the conditions provided for by law".

62. Neither respondent Party has sought to justify the measures concerned in the present cases. The Chamber finds that there is no material distinction between the present cases and those in of Medan and Others (Decision on the Merits on 3 November 1997, Cases No. 96/3, 8 and 9). Moreover, the new legislation issued after this judgment (see paragraph 10 above) did not change the situation of the applicants in the present applications. Accordingly the Chamber finds that, as in those earlier cases, the applicants were made to bear an "individual and excessive burden" and that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

63. Those applicants who instituted proceedings (cases CH/96/2, 4, 5, 6, 7, 11, 13, 14 and 19) complain that the civil proceedings that she or he instituted with a view to obtaining recognition of her or his rights as owner of her or his apartment and registration as such in the land registry, have been compulsorily adjourned by virtue of the Decree of 3 February 1995 (No. 5/95, see paragraph 9

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above). They allege the breach of Article 6 of the European Convention on Human Rights in this respect. Other applicants who did not institute proceedings allege a violation of Article 6, on the ground that the aforementioned Decree deprived them of their right of access to Court. Insofar as material Article 6 is in the following terms:

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

64. As in the cases of Medan and Others the Chamber notes that the proceedings in question have been adjourned, and thus completely inactive, since shortly after the Decree in question entered into force. In so far as that situation has continued since the Annex 6 Agreement came into effect, and despite the Chamber's Decision in the Cases of Medan and Others, continues up to the present day so far as the Chamber is aware, there is a continuing interference with the applicants' right of access to court for the purpose of having their civil claims determined, as guaranteed by Article 6, (see the judgment of the ECHR in the case of Golder v. United Kingdom, 1975 Series A No. 18, paragraphs 35 and 36). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of the Protocol to the Convention and finds that there is a breach of Article 6 of the Convention in the case of each applicant in so far as the compulsory adjournment of his case has continued since 14 December 1995. The Chamber also finds that in consequence of the adjournment the duration of the proceedings has been prolonged beyond a "reasonable time" since that date, the cases having been completely inactive. There is therefore a breach of Article 6 in the case of each applicant in this respect also.

65. The Chamber further notes that the effect of the Decree of 3 February 1995 (No. 5/95, see paragraph 9 above) is to deprive the other applicants of any effective access to a court. It may have been possible for them to institute proceedings. However, those proceedings would have had to be adjourned and would not therefore have been effective. It is therefore apparent that the very existence of the aforementioned Decree deprived them of their right of access to Court under Article 6 of the Convention.

66. In respect that the breaches of Article 6 which it has found result from laws which are in force and applied in the Federation, and from acts or omissions of courts within the Federation, the Chamber finds that the Federation is responsible for these violations of the applicants' rights also.

3. The alleged Absence of an Effective Remedy for the Applicants

67. Seven applicants (see paragraph 45 above) also maintain that they have been the victims of a breach of Article 13 of the Convention in that no effective remedy has been available to them in respect of their complaints under the Convention. Article 13 provides as follows:

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

68. In view of its decision under Article 6(1) of the Convention to the effect that the applicants have been denied access to court to establish their property rights, the Chamber considers it unnecessary also to examine the complaints under Article 13 of the Convention. The requirements of Article 13 of the Convention are less strict than those of Article 6, and in the present context are, in the Chamber's opinion, absorbed by Article 6, (see e.g. the judgment of the European Court of Human Rights in the case of Hentrich v. France of 22 September 1994, Series A No. 296, para. 65).

VI. REMEDIES

69. Under Article XI paragraph 1(b) of the Agreement the Chamber must address in its Decision the question what steps shall be taken by the respondent Party or Parties in question, in this case the State and Federation of Bosnia and Herzegovina, to remedy the breaches of the Agreement which it has found.

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70. The Chamber notes that the legal situation remains essentially the same as that which it addressed in the Decision in the case of Medan and Others v. (1) Bosnia and Herzegovina and (2) The Federation of Bosnia and Herzegovina (CH/96/3/ 8 and 9). It is therefore appropriate to make orders along the same lines as it did in that case.

71. The breaches of Article 1 of Protocol No. 1 which the Chamber has found, arose from the legislation already referred to. The State is responsible for having passed that legislation, but the matters which it deals with are now within the responsibility of the Federation, which recognises and applies the legislation. In these circumstances the Chamber considers that it is the responsibility of the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicants' contracts which was imposed. It will therefore make an order against the Federation to that effect.

72. The Chamber will also order the Federation to lift the compulsory adjournment of the court proceedings instituted by certain of the applicants, which it has found to be in violation of Article 6 of the Convention, (see paragraphs 63-66 above), and to take all necessary steps to secure the right of all the applicants to access to court.

73. The Chamber further considers it appropriate to allow the applicants to submit, within three months of the date of the public delivery of the present decision, any claims they wish to put forward against either respondent Party for monetary relief or other remedies within the scope of Article XI paragraph 1 (b) of the Agreement.

VII. CONCLUSIONS

74. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible in so far is they concern Article 6 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention;

2. by 13 votes to 1, that the passing of legislation providing for the retroactive nullification of the applicants' contracts for the purchase of their apartments involved violations of Bosnia and Herzegovina of the applicants' rights under Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and that Bosnia and Herzegovina has thereby breached its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

3. by 13 votes to 1, that the recognition and application within the Federation of the legislation providing for the retroactive nullification of the applicants' contracts involves violations by the Federation of Bosnia and Herzegovina of the applicants' rights under Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the Federation is thereby in breach with its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

4. unanimously, that the continuing adjournment since 14 December 1995 of the civil proceedings instituted by the applicants Mr. Podvorac, Mr. Momčilović, Mr. Riorović, Mr. Janjević, Mr. Vrančlć, Mr. Galović, Mr. D.Đ., Mr. Fetahagić and Mr. B.K. (Applications No. CH/96/2, 4, 5, 6, 7, 11, 13, 14 and 19) involves violations by the Federation of Bosnia and Herzegovina of the applicants' rights to access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the European Convention on Human Rights and that the Federation is thereby in breach of its obligations under Article I of the Agreement;

5. unanimously, that the Decree of 3 February 1995 also involves a violation of the Federation of Bosnia and Herzegovina of the rights of Mr. Alijagić, Mr. Noković, Mr. Jovišević, Mr. Glušac, Mr. M.H., Mr. T.B. and J.S. (Applications No. CH/96/12, 20, 24, 25 and 26 and

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CH/97/32 and 33) to access to a court under Article 6 of the European Convention on Human Rights and that the Federation of Bosnia and Herzegovina is thereby in breach of its obligations under Article I of the Agreement;

6. unanimously, that it is unnecessary to examine the applicants' complaints based on Article 13 of the Convention;

7. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

8. unanimously, to order the Federation to lift the compulsory adjournment of the court proceedings instituted by the applicants and to take all necessary steps to secure the applicants' right of access to court;

9. unanimously, to order the Federation to report to it by 12 September 1998 on the steps taken by it to give effect to this Decision;

10. unanimously, to reserve for further consideration the question whether any other remedies should be ordered against either respondent Party and to allow the applicants to submit before 12 September 1998 any claim they wish to put forward in this respect.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber

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