DECISION ON THE MERITS

DELIVERED ON 10 September 1998

in

CASE No. CH/97/46

Ivica KEVEŠEVIĆ

against

The Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 15 July 1998 with the following Members present:

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

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of the Application by Ivica Kevešević against The Federation of Bosnia and Herzegovina referred to the Chamber on 31 July 1997 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 for Peace in Bosnia and Herzegovina and registered on 12 August 1997 under Case No. CH/97/46;

Adopts the following Decision on the merits of the Application under Article XI of Annex 6 to the Agreement and Rules 57 and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Croat descent. In 1993 he left his apartment in Vareš, to which he had an occupancy right, after the town passed into the control of the Army of the Republic of Bosnia and Herzegovina (the "ARBiH"). In July 1995 the applicant's son and in April 1996 the applicant and his spouse returned to the apartment. However, on 22 November 1996 the applicant's apartment was declared permanently abandoned and, on 28 November 1996, the applicant and his family were evicted.

2. The application was referred to the Chamber by the Ombudsperson. In her Report of 19 March 1997 she examined the applicant's complaints under Articles 8, 6 paragraph 1, 13 and 14 of the European Convention on Human Rights ("the Convention") and found that there has been a violation of Article 8 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 31 July 1997 the Ombudsperson referred the application to the Chamber.

4. On 10 October 1997 the Chamber decided to invite the Federation of Bosnia and Herzegovina to submit observations in writing on the admissibility and merits of the case. No observations were received from the respondent Party.

5. On 16 January 1998 the Chamber declared the application admissible under Article VIII paragraph 2 of Annex 6 to the Agreement, finding that the case raised issues within its jurisdiction under Article II paragraph 2 of the General Framework Agreement, including in particular issues under Articles 6, 8, 13 and 14 of the Convention and Article 1 of Protocol 1 to the Convention, and that issues might also arise under other international instruments listed in the Appendix of the Agreement, in so far as the case raised issues of discrimination.

6. A hearing, which concerned the merits of the present application, was held in Sarajevo on 11 March 1998.

There appeared before the Chamber:

Mr. Boško Andrić, advocate practising in Vareš, Counsel for the applicant;

Ms. Simona Granata, Deputy Human Rights Ombudsperson for Bosnia and Herzegovina;
Ms. Dženana Hadžiomerović, Senior Legal Expert at the Office of the Human Rights Ombudsperson;
Mr. Nedim Osmanagić, Senior Legal Expert at the Office of the Human Rights Ombudsperson;

Ms. Tifa Potogia, Agent of the respondent Party.

7. At the beginning of the hearing the Deputy Ombudsperson put forward additional submissions stating that the present application raised issues under Article 1 of Protocol No. 1 to the Convention as well as the Articles mentioned by the Ombudsperson in her Report.

8. The Agent of the respondent Party stressed on several occasions at the public hearing the willingness of the respondent Party to reach a friendly settlement under Article IX of Annex 6 to the General Framework Agreement and Rule 44 of the Chamber's Rules of Procedure. The Agent stated that the mayor of Vareš would take all necessary steps for the applicant to be reinstated in his apartment. The applicant's representative showed interest in discussing the possibility of a friendly settlement with the respondent Party.

9. On 12 March the Chamber invited both the applicant and the respondent Party to inform it of any developments towards a friendly settlement reached no later than 1 April 1998. The Federation of Bosnia and Herzegovina informed the Chamber by a letter dated 2 April 1998 that all necessary steps

had been taken that Mr Kevešević would be able to return to his apartment. However, an extension of the time limit until 1 May 1998 was requested. The Chamber granted this extension and invited the Parties by a letter of 8 April 1998 to negotiate in good faith with a view to reaching an amicable solution. The Chamber offered to provide assistance to help the Parties reach an agreement.

10. Meanwhile, by a letter of 7 April 1998, received at the Registry on the same day, the applicant's representative informed the Chamber that the apartment in question was still occupied by someone else and that the respondent Party had not undertaken any steps to reach a friendly agreement or evicted the occupant of the apartment. This letter was transmitted to the respondent Party, reminding it of the time limit of 1 May 1998 for reaching a friendly settlement.

11. On 4 May 1998 the applicant's representative again expressed the applicant's discontent at the fact that the apartment in question had still not been returned to him. On 13 May 1998 the Federation requested another extension of the time-limit for reaching a friendly settlement. Having regard to the statements made by the applicant's representative and the extension of the time-limit already granted to the respondent Party the Chamber found that it was unlikely that an "amicable resolution of the matter on the basis of respect for the rights and freedoms" referred to in Annex 6 of the General Framework Agreement could be reached and decided on 8 June 1998 not to accede to the Federation's request for a further extension of the said time-limit.

12. On 15 July 1998 the Chamber deliberated on the merits of the case.

III. ESTABLISHMENT OF THE FACTS

A. The facts of the case

13. The facts of the case as they appear from the applicant's submissions, the documents in the case file and the Report of the Ombudsperson of 19 March 1997, are not in dispute and may be summarised as follows.

14. The applicant is a citizen of Bosnia and Herzegovina of Croat descent. From 1982 he had an occupancy right to an apartment in Vareš. On 3 November 1993, after the town had come under the control of the Army of Bosnia and Herzegovina, the applicant, his spouse, his daughter, his son-in-law and his two grandchildren left Vareš due to the hostilities.

15. The applicant's son returned to the apartment in July 1995 and the applicant and his spouse in April 1996. In June 1996 the applicant's son left Vareš for Croatia. Between April 1996 and 14 November 1996 the applicant lived peacefully in his apartment and paid all necessary bills for that period. On 9 November 1996 a child was born to the applicant's daughter.

16. On 14 November 1996 the applicant was orally informed by the Vareš Municipal Secretariat for General Administration, Urban Planning, Property Law and Geodetic Affairs ("the Municipal Secretariat") that he had moved unlawfully into the apartment and was therefore under the obligation to vacate it within seven days. The applicant was neither provided with any document nor invited to comment on the request to leave the apartment.

17. The applicant was again summoned by the Municipal Secretariat on 21 November 1996 to appear before it a second time the next day. The applicant was informed that, if he did not do so, he would be evicted. When he appeared before the Municipal Secretariat on 22 November he received a decision of the same date, declaring the apartment "permanently abandoned" and stating that the applicant had "permanently lost his occupancy right" over it. The applicant was informed that an appeal with the Federal Ministry for Urban Planning and Environment was possible but that this appeal would have no suspensive effect.

18. The reasoning of the Decision was based on Article 1, Article 3 paragraphs 1 and 2 and Article 10 paragraphs 1 and 2 of the Law on Abandoned Apartments ("the Law", paragraph 21-30 below) and can be summarised as follows. The applicant had left the apartment after 30 April 1991.

He had therefore temporarily lost his occupancy right to the apartment under Article 1 of the Law. The apartment had neither been abandoned for one of the reasons provided for in Article 3 paragraph 1 and 2 of the Law, nor had the applicant come back within the time limit set out in Article 3 paragraph 3 and Article 10 paragraph 1 of the Law.

19. On 26 November 1996 the applicant lodged an appeal against the Municipal Secretariat's decision of 22 November 1996 with the Ministry of Urban Planning and Environment, admitting that he and his family had left the apartment on 3 November 1993, but explaining that they had had to leave Vareš as a consequence of the hostilities, a reason which might be considered as falling under paragraph 1 or 2 of Article 3 of the Law. On 29 November 1997, giving the same reasons as the First Instance organ, the Ministry of Urban Planning and Environment rejected the applicant's appeal.

20. Meanwhile, on 27 November 1996, a first attempt to evict the applicant and his family failed as monitors of the International Police Task Force and members of the Office of the High Representative were present to prevent it. The following day the applicant and his family were evicted from the apartment and a Bosniak family moved in on the same day. According to the applicant, they had another apartment in Vareš and a house in a village close to Vareš.

B. Relevant legislation

1. The Law on Abandoned Apartments

21. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments (Official Gazette 6/92). This decree was adopted by the Assembly of the RBiH as a law on 1 June 1994. It was amended in 1992, 1994 and 1995 (Official Gazette 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). This law concerns the allocation of occupancy rights over socially-owned apartments that have been abandoned by the prior occupancy right holders. The Law on Abandoned Apartments ceased to apply under Article 1 of the Law on the Cessation of the Application of the Law on Abandoned Apartments on 4 April 1998 (Official Gazette of the Federation of Bosnia and Herzegovina 11/98).

22. Under Article 1 of the Law an occupancy right shall be suspended if the occupancy right holder and the members of his or her household "have abandoned" the apartment after 30 April 1991.

23. Article 2 defines an apartment as "abandoned" if it has been left or is "temporarily not being used" by the occupancy right holder or the members of his or her household.

24. Article 3 provides for some exceptions to the rule set out in Article 2. Such exceptions exist,

> (a) " ... where the occupancy right holder and members of his or her household have been forced to leave the apartment as a result of compulsion from aggressive actions intended to execute a policy of ethnic cleansing of a particular population from certain areas or in the course of a pursuit of other goals of the aggressors."
>
> (b) " ... if the apartment was destroyed, burnt or in direct jeopardy as a result of war actions (e.g. threat to life and limb, eviction by the aggressors and other similar actions)."
>
> (c) " ... if the holder of the occupancy right, together with members of his household, resumes using the apartment, if he is within the territory of the Republic of Bosnia and Herzegovina within 7 days, and if he is outside the territory of the Federal Republic of Bosnia and Herzegovina within 15 days after the entry into force of this law."
>
> (d) " ... if the holder of the occupancy right or members of his or her household - within the terms stated in the formal approval to stay abroad or in another place within the country - left the apartment for the purpose of effecting a private or business voyage, were sent as a representative of a state authority, enterprise, state institution or other organisation or association upon the request or with the approval of a competent state authority, were sent by

a medical institution for medical treatment or joined the armed forces of the Republic of Bosnia and Herzegovina."

25. Under Article 4 a state organ, an allocation right holder, a political organisation, a social organisation, an association of citizens and a housing board may initiate proceedings for an apartment to be declared abandoned.

26. Article 5 provides as follows:

"A municipal authority competent for housing shall issue a procedural decision as to whether an apartment is considered abandoned *ex officio* or within 7 days after the receipt of a proposal or an initiative under Article 4.

If the competent organ referred to in paragraph 1 of this Article fails to issue the decision within the given time limit, a decision will be taken by the Minister for Urban Planning and Environment."

" ... "

27. Interested parties may appeal to the Ministry for Urban Planning and Environment against a decision of the municipal authorities for housing matters. An appeal has no suspensive effect.

28. Article 7 of the Law provides for the allocation for temporary use of an apartment that has been declared abandoned, to an "active participant in the fight against the aggressor against the Republic of Bosnia and Herzegovina" or to a person who lost his apartment due to hostile action.

29. Under Article 8 of the Law the temporary use of the apartment may last up to one year after the date of the cessation of the imminent threat of war. A temporary user is obliged to vacate the apartment at the end of that period and to place it at the disposal of the organ which allocated it. If he fails to do so he shall be forcibly evicted.

30. Article 10 of the Law reads as follows:

"If the holder of the occupancy right within the meaning of Article 1 does not resume using his or her apartment within the time limits laid down in Article 3, which run from the date when the decision on the cessation of the state of war is issued, he or she shall be considered to have abandoned the apartment permanently.

On the day of the expiry of the relevant time limit cited in paragraph 1 of this Article the holder of the occupancy right over an apartment shall lose that right and that fact shall be stated in a decision of the competent authority."

" ... "

2. Decision concerning the state of war

31. The Presidency of the Republic of Bosnia and Herzegovina declared the Republic of Bosnia and Herzegovina to be at war on 20 June 1992 (RBiH O.G. 7/92). The Decision on the Cessation of the State of War was taken on 22 December 1995 (RBiH O.G. 50/95). It was published on the Bulletin Board of the Presidency of the RBiH in Sarajevo and entered into force on that same day. The relevant Official Gazette comprising this decision was distributed on 5 January 1996.

IV. COMPLAINTS

32. The applicant alleges that the decision to declare his apartment abandoned and the subsequent eviction of the applicant and his family involves a violation of his rights under Articles 6,

8, 13 and 14 of the European Convention on Human Rights (the "Convention") and Article 1 of protocol No. 1 to the Convention.

V. SUMMARY OF THE SUBMISSIONS OF THE PARTIES

1. The applicant

33. The applicant alleged that the Decision of 22 November 1996 and the subsequent eviction on 28 November 1996 violated his rights under Articles 6, 8, 13 and 14 of the Convention. He stressed that the "only reason for his eviction" was the fact that he was of Croat descent.

2. The Respondent Party

34. The agent of the respondent Party observed that the general situation in Vareš has improved. She also stated that, having contacted the mayor of Vareš, a friendly settlement could be reached in the present case.

VI. OPINION OF THE CHAMBER

35. 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. Under Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms" including the rights and freedoms provided for in the Convention. The Chamber will therefore consider whether the application of the Law on Abandoned Apartments (see B. Relevant legislation, paragraph 21) leading to the Decision of 22 November 1996 declaring the applicant's apartment permanently abandoned and the subsequent eviction of the applicant and his family involved a breach of the applicant's rights under Article I of the Agreement.

1. Article 8 of the Convention

36. The applicant alleged that the decision of 22 November 1996 declaring his apartment abandoned and the subsequent eviction of the applicant and his family from the apartment constitutes a violation of his rights under Article 8 of the Convention.

37. Article 8 of the Convention provides as follows:

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

38. The Ombudsperson agreed with the applicant's allegation. The respondent Party did not express itself on this point.

a) Was the applicant's apartment a "home" within the meaning of the Convention?

39. The applicant stated that he had had an occupancy right over the apartment since 1982 and had been living there with his family without interruption until 3 November 1993. The applicant's son had returned in July 1995 and the applicant and his spouse had returned in April 1996. From that

time onwards the applicant paid all the bills, confirming that he wished to continue living there on a regular basis.

40. The respondent Party offered no argument to the contrary.

41. The Ombudsperson considered "that the applicant actually intended to live in the apartment on a permanent basis and had sufficient links with this apartment for it to be considered his 'home' within the meaning of Article 8 paragraph 1" (paragraph 67 of the Ombudsperson's Report).

42. The Chamber notes that the applicant and his family lived in the apartment continuously from 1982 onwards. He only left it because of the hostilities, returning to it when he felt he could safely do so. The Chamber therefore agrees with the Ombudsperson that the links which the applicant had retained with the apartment are sufficient for it to be considered his "home" at the time of the eviction (see *inter alia*, European Court of Human Rights, *Gillow v. United Kingdom*, judgment of 24 November 1996, Series A no. 109, paragraph 46).

b) Was there an interference by a public authority with the exercise of the applicant's right to respect for his "home"?

43. The applicant stressed in his application and in the public hearing the gravity of the interference with regard to the specific circumstances of the eviction.

44. The respondent Party offered no argument to the contrary.

45. The Ombudsperson was of the opinion that the Municipal Secretariat's decision to declare the applicant's apartment permanently abandoned and his subsequent eviction from the apartment constituted an interference with his right to respect for his home (paragraph 67 of the Ombudsperson's Report).

46. The Chamber finds that although the Decision of 22 November 1996 was not final, an appeal against it had no suspensive effect. It therefore deprived the applicant of his legal status as "occupancy right holder" over the apartment. The subsequent eviction on 28 November 1996 physically deprived him of his home. The Decision of 22 November 1996 and the subsequent eviction interfered therefore with the applicant's right to respect for his "home" in the sense of Article 8 paragraph 1 of the Convention.

c) Was the interference justified?

47. The applicant alleged that his rights under Article 8 of the Convention have been violated. He offered no detailed argument.

48. The respondent Party offered no argument to the contrary.

49. In order to determine whether the interference was justified under the terms of paragraph 2 of Article 8, the Chamber must examine in turn whether it was "in accordance with the law", whether it had an aim that was legitimate under that paragraph and whether it was "necessary in a democratic society" (European Court of Human Rights, *Gillow*, see paragraph 42 above, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

"in accordance with the law"

50. The Ombudsperson, with regard to the substance of the Law on Abandoned Apartments, was not satisfied that the interference with the applicant's right to respect for his home was "in accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention (paragraph 79 of the Ombudsperson's Report).

51. The Chamber must decide whether the legal instruments in question can be regarded as "law" for the purposes of Article 8 paragraph 2) of the Convention. In this connection the Chamber

will have regard to Article 10 of the Law on Abandoned Apartments and the Decree on the Cessation of War (paragraphs 21 and 31 above).

52 . The term "law" is related to certain qualitative criteria of a norm, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble of the Convention (European Court of Human Rights, *Malone v. United Kingdom*, judgment of 2 August 1984, Series A no. 82, paragraph 67). It includes the following elements.

53. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case (European Court of Human Rights, *Sunday Times v. the United Kingdom* (No. 1), 26 April 1979, Series A no. 30, paragraph 49). Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (*ibidem*). Finally, it appears from the case-law of the European Court of Human Rights that the law must provide safeguards against abuse; the question of safeguards, however, is one which the Chamber will consider in the wider context of Article 6 (*mutatis mutandis*, (European Court of Human Rights, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, paragraph 90).

54. The Chamber notes that the application of the time-limits under Article 10 of the Law on Abandoned Apartments (see paragraph 30 above) depended on the publication of the Decision on the Cessation of War (see paragraph 31 above).

(i) Accessibility

55. As to the requirement of accessibility, the Chamber notes that Article 10 of the Law provided for a time-limit of seven days (in the case of persons living within the territory of Bosnia and Herzegovina) or fifteen days (in the case of persons living outside the borders of Bosnia and Herzegovina), running from the date of publication of the Decision on the Cessation of War (see paragraph 31 above), within which interested persons could claim the right to return to housing to which they had held an occupancy right. This decision was taken by the Presidency of the RBiH on 22 December 1995 and posted the same day on the bulletin board of the Presidency building in Sarajevo with the effect that the Decision came into force on the same day. The edition of the Official Gazette containing this decision was published on 5 January 1996.

56. The Chamber must have regard to the large number of persons with a potential interest in the legal provisions in question as well as to the fact that these persons were to be found throughout the country and even abroad. In the Chamber's opinion, it would be wholly unrealistic to expect the contents of a notice posted on a single bulletin board in the capital to come to the notice of such a public. In the circumstances, therefore, publication of the Decision on the bulletin board of the Presidency building could not suffice to render the law in question "accessible".

(ii) Quality of the Law

57 Irrespective of the above mentioned difficulties resulting from the date of publication of the Decision on the Cessation of War, compliance with the time-limits in question (a seven-day time-limit applying to persons living within the borders of the country and a fifteen-day time-limit applying to persons living abroad (see paragraph 30 above)) was in any case practically impossible. It is not acceptable that a law should deprive persons permanently of their rights if they do not fulfil a wholly unreasonable condition, such as the time-limit referred to, which could not possibly be fulfilled by the vast majority of those affected. This Law does therefore not meet the requirements of the "rule of law" in a democratic society (see *inter alia*, Human Rights Chamber, *Stretko Damjanović v. The Federation of Bosnia and Herzegovina*, Decision of 8 October 1997, Case no. CH/96/30, paragraph 31 and European Court of Human Rights, *Malone v. United Kingdom* (see paragraph 52 above), paragraph 67; *Kruslin v. France*, judgment of 24 April 1990, Series A no. 176-A, paragraphs 27, 30, 32 and 35 and *Huvig v. France*, judgment of 24 April 1990, Series A no. 176-B, paragraphs 26 and 29).

(iii) Conclusion

58. In conclusion, the legal provisions in question did not meet the standards of a "law" as this expression is to be understood for the purposes of Article 8 of the Convention. That in itself is sufficient to find that there has been a violation of that provision. This finding dispenses the Chamber from having to consider whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

2. Article 6 of the Convention

59. The applicant invokes Article 6 of the Convention without specifying how this provision was allegedly violated.

60. Article 6 of the Convention provides as follows:

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

61. The respondent Party did not submit any observations on the alleged violation of Article 6 of the Convention, nor did the Agent of the Respondent Party comment on this allegation in the course of the public hearing before the Chamber.

62. The Ombudsperson states that, since the proceedings concerning the applicant's case are still pending, she considers that this complaint is premature (paragraph 95 of the Ombudsperson's Report).

63. The Chamber must examine if an occupancy right over an apartment can be regarded as a "civil right" under Article 6 paragraph 1 of the Convention. The European Court of Human Rights has found that the right to occupy one's home is a "civil right" within the meaning of Article 6 paragraph 1 of the Convention (European Court of Human Rights, *Gillow v. United Kingdom*, judgement of 24 November 1986, Series A no. 109, paragraph 68). The Chamber therefore finds that the dispute about the applicant's occupancy right comes within the ambit of Article 6 paragraph 1 of the Convention.

64. Neither in the application nor at the public hearing, did the applicant give any indication how his rights under this provision had been violated. The domestic proceedings were instituted on 26 November 1996 when the applicant appealed against the Decision of 22 November 1996 declaring the apartment abandoned. This appeal was decided by the Ministry for Urban Planning and Environment on 29 November 1997. Under the Law on Administrative Disputes the applicant would have had the possibility to initiate proceedings before the civil courts.

65. According to the case-law of the European Commission and the European Court of Human Rights, the question whether court proceedings satisfy the requirements of Article 6 paragraph 1 of the Convention can only be answered by examining the proceedings as a whole, that is to say only once they have been concluded. Only under exceptional circumstances and if there are strong indications that a fault of the proceedings at an earlier stage cannot be remedied at a later stage, may the proceedings in a specific case be examined by the Chamber before their conclusion (European Court of Human Rights, *De Cubber v. Belgium*, judgement of 26 October 1984, Series A no. 86, paragraph 33; *De Haan v. the Netherlands,* Reports 1997, paragraphs 52 and 53; European Commission of Human Rights, *Ruiz-Mateos v. Spain,* Decision of 6 November 1990, D.R. 67, p. 197; *X. v. Norway,* Decision of 4 July 1978, D.R. 14, p. 229).

66. The proceedings in this case do not raise any specific problems which have to be examined at this stage. Moreover, Article 6 paragraph 1 of the Convention does not oblige a State to provide a procedure, conducted at each of its stages, before "tribunals" which meet the Article's various requirements. However, an appeal to one judicial body which fulfils these requirements has to be provided. (see *inter alia*, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgement of 23 June 1981, Series A no. 43, paragraph 33; *Albert and Le Compte* v. Belgium, judgement of 10 February 1983, Series A no. 58, paragraph 36). No doubts have been raised by the applicant that the civil

courts, before which he would be able to initiate proceedings would not comply with the requirements of Article 6 paragraph 1 of the Convention. The facts as placed before the Chamber, therefore, do not reveal a violation of Article 6 paragraph 1 of the Convention.

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

67. Article 1 of Protocol No. 1 to the Convention provides as follows:

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

68. The applicant did not include this provision amongst the rights allegedly violated.

69. The respondent Party did not submit any written observations on the apparent violation of Article 1 of Protocol No. 1 to the Convention nor did the Agent of the respondent Party deny any allegations on the facts or on the merits at the public hearing.

70. The Ombudsperson did not consider a violation of this provision in her Report of 19 March 1997 but stated in her additional submissions at the oral hearing on 11 March 1998 (the "additional submissions") that the present application raised issues under Article 1 of Protocol No. 1 to the Convention. The Ombudsperson referred to her arguments in relation to Article 8 in her Report of 19 March 1997 and expressed the opinion that no fair balance had been struck between the interests of the applicant and the general interests of the community. The Ombudsperson considered, "independently of the lawfulness deficiency", that the application of Article 10 of the Law in the present case constituted a disproportionate interference with the applicant's right to respect for his home. Moreover, the Ombudsperson considered that the lack of any possibility to participate in any meaningful manner in proceedings which comply with the requirements of Article 6 of the Convention prior to the annulment of his occupancy right, was sufficient of itself, to constitute also a violation of Article 1 of Protocol No. 1 to the Convention.

71. The Chamber considered *propriu motu* that the decision of 22 December 1996 and the subsequent eviction appears to raise issues under Article 1 of Protocol No. 1 to the Convention and therefore included this provision in its Decision on Admissibility of 12 January 1998.

a) Does the applicant's occupancy right over his apartment constitute a "possession"?

72. The Ombudsperson considered that an "individual's occupancy right constitutes a 'possession' within the meaning of Article 1 of Protocol No. 1 to the Convention, having regard to the circumstance that it entailed, *inter alia*, the right to use an apartment undisturbed and permanently, the possibility for cohabiting members of the holder's household to obtain the occupancy right after the holder's death or after the termination of the latter's occupancy right on other grounds and the automatic [obtaining] by the holder's cohabiting spouse of a joint occupancy right" (Additional submissions, p. 2).

73. As to whether an occupancy right over an apartment would constitute a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention, the Chamber recalls that it has found that an occupancy right can indeed be regarded as a "possession", stressing in particular that an occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy the apartment in question indefinitely (Case No. CH/96/28, *M.J. v. The Republika Srpska*, Decision of 7 November 1997, paragraph 32).

b) Has there been an interference with the applicant's right to peaceful enjoyment of his possession?

74. The Ombudsperson considered that the annulment of the applicant's occupancy right constitutes an interference with the applicant's right to enjoyment of his possessions within the meaning of the first sentence of Article 1 of Protocol No. 1 to the Convention.

75. The Chamber finds that the Decision of 22 November 1996 and the subsequent eviction of the applicant and his family interfered with the applicant's right to peaceful enjoyment of his possession in the sense of Article 1 of Protocol No. 1 to the Convention and recalls the reasons given in relation to the interference with the applicant's right to respect for his "home" (see paragraph 46 above).

c) The applicable rule

76. The Chamber recalls the jurisprudence of the European Court of Human Rights which found that Article 1 of Protocol No. 1 to the Convention "comprises three distinct rules": The first rule in the first sentence of Article 1 of Protocol No. 1 to the Convention 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.

77. The decision of 22 November 1996 declaring the applicant's apartment abandoned terminated the applicant's occupancy right. Although the applicant had the possibility to appeal this decision, which he in fact did, the appeal did not have any suspensive effect for the execution of the decision which then took place on 28 November 1996. As a consequence, the applicant was not deprived of his legal status as the occupancy right holder over the apartment in a final and binding way. However, as the Law on Abandoned Apartments did not suspend the execution of the decision the applicant was as a consequence evicted and in fact deprived of the possibility to use the apartment. The European Court of Human Rights has already found that the second rule under Article 1 of Protocol No. 1 to the Convention is applicable even if no formal expropriation had taken place but the situation complained of amounted nevertheless to a *de facto* expropriation (see *inter alia*: European Court of Human Rights, *Papamichalopoulos and Others v. Greece*, judgement of 24 June 1993, Series A no. 260-B, paragraph 42.).

78. The Chamber finds that the applicant was deprived of his possessions and that therefore the second rule under Article 1 of Protocol No. 1 to the Convention is applicable.

79. The Chamber must next examine whether the deprivation of the applicant's possessions can be justified. This could only be the case if the deprivation was in the public interest and subject to conditions provided for by law and by general principles of international law. A parallel can again be drawn to the Chamber's examination of the applicant's rights under Article 8 of the Convention, given that the decision and eviction under the Law on Abandoned Apartments interfered with the applicant's right to respect for his home as they interfered with the applicant's right to peaceful enjoyment of his possessions.

"conditions provided for by law"

80. The Chamber has already found that the Law on Abandoned Apartments does not meet the standards of a "law" in a democratic society (see paragraphs 50-57 above). This is in itself enough to find that there has also been a violation of Article 1 of Protocol No. 1 to the Convention.

4. Article 13 of the Convention

81. The applicant alleges that his rights under Article 13 of the Convention have been violated but did not specify the circumstances which led to this violation.

82. Article 13 of the Convention provides as follows:

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

83. The Respondent Party did not express itself on this point.

84. The Ombudsperson recalled that Article 13 required an effective remedy in respect of grievances that can be regarded as "arguable" in terms of the Convention. As she found that the complaint under Article 6 was premature, she also found that the complaint under Article 13 could not be regarded as "arguable" (paragraph 99 of the Ombudsperson's Report).

85. The Chamber does not deem it necessary to determine whether there has been a failure to observe the requirements of Article 13 of the Convention as it has already examined the case with regard to Article 6 of the Convention. Following the consistent case-law of the European Court of Human Rights, the requirements under Article 13 of the Convention are less strict than those under Article 6 of the Convention (*inter alia*: *De Wilde Ooms and Versyp*, judgement of 18 June 1971, Series A no. 12, paragraph 95 and *Sporrong and Lönnroth* v. Sweden, judgement of 23 September 1982, Series A no. 51, paragraph 52).

86. The Chamber therefore finds it unnecessary to examine the applicant's complaint under Article 13 of the Convention.

5. Article 14 of the Convention

87. The applicant invoked Article 14 of the Convention and stated in his application that he finds it particularly important that he is of Croat descent and that this circumstance was the only reason for the eviction. In the public hearing the applicant elaborated further on this point and referred to the fact that all evictions in Vareš concerned Croats and that more than 200 apartments were empty to which Croat owners or occupancy right holders were prevented from returning.

88. Article 14 of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

89. At the oral hearing the respondent Party, without providing any specific arguments in relation to the case of Mr. Kevešević, stressed the fact that the general situation in Vareš had improved and that now persons of Croat descent were again living in that town. The main problem with regard to accommodation was that many of the buildings in Vareš were still uninhabitable.

90. The Ombudsperson stated in her Report that she had not been provided with any information that would substantiate the applicant's allegation that he was subjected to discriminatory treatment on account of his national origin (see paragraph 104 of the Ombudsperson's Report). The Ombudsperson's representative stated at the public hearing that the Law on Abandoned Apartments did not, at first sight, give the impression of being discriminatory as such and that she therefore did not carry out any investigations related to discrimination. She further stated that no Bosniaks had left the town and therefore Article 10 of the Law could not have been applied to them.

91. The Chamber observes that under Article I item 14 of the Agreement the Parties are bound to secure to all persons within their jurisdiction, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided, *inter alia*, in the international agreements listed in the Appendix to the Agreement. Article II paragraph 2 (b) of the Agreement confers on the Chamber jurisdiction to consider allegations of discrimination arising in the enjoyment of the rights and freedoms concerned (Case No. CH/97/41, *Milorad MARČETA v. The Federation of Bosnia and Herzegovina*, Decision of 7 November 1997, paragraph 32).

92. The Chamber recalls that Article 14 of the Convention safeguards individuals, placed in similar situations, from any discrimination in the enjoyment of the rights and freedoms under the Convention. According to the consistent case-law of the European Court of Human Rights, a distinction in the enjoyment of a right is discriminatory if it has no "reasonable and objective justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see *inter alia*, European Court of Human Rights, *Marckx v Belgium*, judgement of 13 June 1979, Series A no. 31, paragraphs 32, 33).

93. In the public hearing before the Chamber the applicant stated that a large number of evictions took place in Vareš and that all of them concerned persons of Croat descent. Moreover, he alleged that more than 200 apartments stayed empty for over one year. In the applicant's case a Bosniak family moved into his apartment only two hours after they had been evicted. The applicant alleges that this family was previously living in another apartment and that they also owned a house in a village close to Vareš.

94. The Chamber finds that the general circumstances in Vareš should be regarded very cautiously. The situation may give rise to discriminatory acts but it must be proved in each case that discrimination has in fact occurred. The applicant has not provided the Chamber with sufficient evidence that it was his national ethnic origin that motivated the authorities to declare his apartment abandoned and to evict him and his family.

95. The Chamber therefore cannot find that the applicant's rights under Article 14 of the Convention taken in conjunction with Article 8 of the Convention or Article 1 of Protocol No. 1 to the Convention have been violated.

VII. REMEDIES

96. 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 breach of the Agreement which it has found, "including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures".

97. In the present case the Chamber considers it appropriate to order the respondent Party to take all necessary steps to annul the decision of 22 November 1996 declaring the applicant's apartment abandoned and to re-instate the applicant into his apartment.

98. The Chamber also reserves to the applicant the right to submit within three months of the date of the delivery of the decision any claim he wishes to make for other redress.

VIII. CONCLUSIONS

99. For the above reasons the Chamber decides:

1. unanimously, that the decision of 22 November 1996 declaring the applicant's apartment abandoned and the subsequent eviction of the applicant involved a violation of Article 8 of the European Convention on Human Rights and that the respondent Party has

thereby breached its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

2. unanimously, that there has been no violation of Article 6 of the European Convention on Human Rights;

3. unanimously, that the decision of 22 November 1996 declaring the applicant's apartment abandoned and the subsequent eviction of the applicant involved a violation of Article 1 of Protocol No. 1 of the European Convention on Human Rights and that the respondent Party has thereby breached its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

4. unanimously, that it is unnecessary to examine the applicant's complaints based on Article 13 of the Convention;

5. by 7 votes to 6, that there has been no violation of Article 14 of the European Convention on Human Rights in conjunction with either Article 8 of the European Convention on Human Rights or with Article 1 of Protocol No. 1 to the European Convention on Human Rights;

6. unanimously, to order the respondent Party to take all necessary steps by way of (legislative or) administrative action to annul the decision of 22 November 1996 declaring the applicant's apartment abandoned and to re-instate the applicant into this apartment;

7. unanimously, to order the respondent Party to report to it by 10 November 1998 on the steps taken by it to comply with the above orders.

8. unanimously, to reserve for further consideration the question whether any other remedies should be ordered against the respondent Party and to allow the applicant to submit before 10 December 1998 any claim he may wish to put forward in this respect.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate dissenting opinions by Mr. Manfred Nowak and Mr. Jakob Moller.

Dissenting Opinion of Mr Manfred Nowak

While I agree with all other aspects of the decision, I disagree with the conclusions of the Chamber in paragraphs 95 and 99 (5) that there has been no violation of Article 14. In my opinion, discrimination is the most important issue of this case. The time-limit in Article 3 (c) and 10 of the Law on Abandoned Apartments as such is an expression of indirect discrimination. It provided, together with related legislation in the Federation and Republika Srpska, the legal basis for preventing minority returns. In Bosnia and Herzegovina more than 2 million people were displaced during the period of war and ethnic cleansing from 1992 to 1995. About half of them became refugees and were (many of them still are) spread over various European and other countries. According to the Law on Abandoned Apartments many of them permanently lost their apartments if they failed to resume using them within 15 days from the cessation of the state of war, i.e. at the beginning of January 1996. The other half were internally displaced persons (IDPs) who had to return to their apartments already within 7 days, i.e. by the end of December 1995, if they wished to keep them. Whether or not they were informed about the existence of this law, almost all refugees and IDPs were in fact unable to comply with this requirement and many lost their apartments. This was, in my opinion, the intention of the authorities who wished to discourage minority returns and at the same time created so-called abandoned apartments which were allocated to members of the ethnic group that formed the majority in the respective towns and villages. Although the Law on Abandoned Apartments does not openly distinguish between Bosnians of Croat, Serb or Bosniak origin, it is in my opinion an obvious example of ethnic, religious and racial discrimination.

I cannot understand the submission of the Ombudsperson (see para. 90) that she was not provided with any information substantiating the allegation of discrimination, that the law, at first sight, gave no impression of being discriminatory as such, and that she therefore did not carry out any investigation related to discrimination. Already in his application to the Ombudsperson of 27 November 1996, Mr. Kevešević stated that his Croat origin was the only reason for his eviction. During the hearing he stated that all evictions in Vareš concerned Croats and that more than 200 apartments were empty to which Croat owners or occupancy right holders were prevented from returning (para. 87). It would not have been difficult for the Ombudsperson who, under Article VI (1) of the Human Rights Agreement, is vested with broad investigatory powers, to investigate on the spot the ethnic composition of Vareš before and after the war and the manner in which the Law on Abandoned Apartments was applied there. Her Representative stated during the public hearing that no Bosniaks had left the town and that Article 10 of the Law therefore could not have been applied to them. I think that this statement was meant to prove that there was no discrimination in the application of the law. If it is true that the law was only applied (equally) to Bosnians of Croat and Serb origin, then this fact in my opinion underlines rather than contradicts the discriminatory character of the law and its application as a whole.

The very concept of "ethnic cleansing" during the war as well as the attempts of the authorities of all three sides since then to keep their respective regions "ethnically clean" as such constitutes one of the most serious practices of racial, ethnic and religious discrimination which today represents the strongest obstacle to the peace process and to the attempts of building again a society based on the rule of law, democracy and human rights. That is why the prohibition of discrimination was accorded such an important place in the context of the human rights regime established by the Dayton Peace Agreement. One example is the competence of the Ombudsperson and the Human Rights Chamber, as laid down in Article II (2) of the Human Rights Agreement, which consists of two different aspects: to consider violations of human rights as provided in the European Convention, and to consider alleged or apparent discrimination in the enjoyment of any of the rights and freedoms provided for in 16 international and European human rights treaties including the European Convention. I, therefore, believe that the Chamber should have considered this issue under Article II (2) b of the Human Rights Agreement (rather than under Article 14 of the European Convention) and found discrimination in relation to the right to possession and respect for the home.

(signed) Manfred Nowak

Dissenting Opinion of Mr Jakob Möller

While I agree with other aspects of the Chamber's Decision, I disagree with the third sentence in paragraph 94 and the finding in paragraph 95, that the applicant has not provided the Chamber with sufficient evidence to sustain a finding of a violation of Article 14 of the Convention, leading to the majority conclusion in paragraph 99 (5) that there has been no violation of Article 14 of the European Convention on Human Rights in conjunction with Article 8 and Article 1 of Protocol No. 1 to the Convention.

In my opinion, the applicant's allegation that the sole reason for his eviction was his Croat origin, which allegation remained unrefuted throughout the proceedings, is sufficiently substantiated to sustain a finding of a violation of Article 14 of the Convention in conjunction with Article 8 and Article 1 of Protocol No. 1 to the Convention.

(signed) Jakob Möller