DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 12 FEBRUARY 1999

CH/97/58

Dušanka ONIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 12 January 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MÉLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Croat descent. She had an occupancy right over an apartment in Sarajevo. After a visit to her parents in Grbavica in May 1992 she was prevented from returning to her apartment due to the hostilities. In January 1993 the apartment was declared abandoned under the Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina, Nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95; henceforth "the old Law") and allocated to a third person for temporary use. After the hostilities had ended the applicant, in March 1996, appealed in vain against the decision declaring her apartment abandoned. Her occupancy right was eventually confirmed by a decision under the Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina, No. 11/98; "the new Law") which entered into force on 4 April 1998. However, this decision has not been enforced.

2. This case involves issues under Article 8 of the European Convention on Human Rights ("the Convention") and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 11 August 1997 and registered on 19 August 1997.

4. On 9 March 1998 the Chamber invited the Federation of Bosnia and Herzegovina to submit observations in writing on the admissibility and merits of the case. On 25 March 1998 the Chamber extended the time-limit to 20 April 1998. The Federation submitted its observations on 17 and 22 April 1998, referring, *inter alia*, to the possibility of an amicable resolution provided the applicant would formally reclaim her apartment pursuant to the new Law. In accordance with the Chamber's order for the proceedings, the applicant was afforded the possibility of replying to the respondent Party's observations and, in that connection, to claim compensation.

5. On 27 August 1998 the applicant informed the Chamber that on 4 July 1998 she had received a decision under the new Law, confirming her occupancy right and ordering the temporary occupant to vacate the apartment within 90 days.

6. On 8 September 1998 the Chamber decided to request the respondent Party to specify, before 2 October 1998, the proposed terms of a friendly settlement based on the respect for the rights and freedoms referred to in the Agreement. The respondent Party did not react.

7. On 5 October 1998 the applicant informed the Chamber that the decision of 4 July 1998 had not been enforced within the time-limit. On 18 November and 18 December 1998 she stated that no action had been taken in respect of her enforcement request of 4 September 1998.

8. On 18 December 1998 the Chamber decided to provide the respondent Party with an opportunity to submit supplementary observations in respect of the current state of the domestic proceedings in the applicant's case.

9. On 8 January 1999 the Agent of the respondent Party referred to her urgent request of 22 December 1998 to be informed by the competent authority of the state of the proceedings in the applicant's case.

10. On 12 January 1999 the Chamber deliberated on the admissibility and merits of the case and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

11. The facts of the case, as they appear from the application, the respondent Party's

submissions and the documents in the case file, are in essence not in dispute and may be summarised as follows.

12. The applicant had an occupancy right over an apartment in Nikola Kašiković Street no. 9/II in Sarajevo. On 1 May 1992 she went to see her parents in Grbavica over the weekend. On various occasions she tried to return to her apartment but was prevented from doing so due to the hostilities. On 1 January 1993 the Municipal Secretariat for Housing Affairs in Sarajevo declared the apartment temporarily abandoned and, on 26 May 1993, the same authority allocated the apartment temporarily to L. O. The applicant has allegedly never received these decisions.

13. On 8 March 1996 the applicant filed a request with the Municipal Secretariat to be allowed to return to her apartment. This request was rejected on 25 May 1996 as being out of time under the Law on Abandoned Apartments. On 26 June 1996 the applicant appealed to the Ministry for Urban Planning and Environment of the City of Sarajevo (later the Ministry of the Canton). On 10 April 1997 the Ministry annulled the conclusion in the above-mentioned decision and referred the case back for reconsideration. The Ministry found the conclusion to be unlawful, holding that the Municipality Secretariat should have examined whether, on the established facts, the applicant's request was well-founded.

14. In a fresh decision of 5 June 1997 the Cantonal Administration for Housing Affairs (formerly the Municipal Secretariat) again rejected the applicant's request, considering that it had been made out of time. On 16 July 1997 the applicant filed an appeal with the Cantonal Ministry for Urban Planning and Housing Affairs.

15. On 8 July 1996, in a parallel set of proceedings, the applicant filed a further appeal with the Ministry for Urban Planning and Environment of the City of Sarajevo against the two decisions declaring her apartment abandoned and allocating it temporarily to L.O. On 30 December 1996 the applicant submitted a complaint to the Supreme Court of the Federation of Bosnia and Herzegovina because of "the silence of the administration". On 8 October 1997 the Supreme Court ordered the Ministry to decide on the applicant's appeal.

16. On 17 April 1998 the Cantonal Administration for Housing Affairs terminated the proceedings relating to the applicant's request to be reinstated into her apartment under the (old) Law and directed her to submit a new request to this end pursuant to Article 4 of the new Law.

17. On 4 July 1998, upon the applicant's subsequent claim, the Cantonal Administration for Housing Affairs confirmed her occupancy right pursuant to Article 7(1) of the new Law, entitled her to repossess the apartment and ordered the temporary occupant L.O. to vacate it within 90 days. The decision noted that L.O.'s house had been totally destroyed during the war. He was therefore recognised as being entitled to alternative accommodation pursuant to Article 3(5) of the new Law.

18. On 4 September 1998 the applicant lodged a request with the Cantonal Administration for Housing Affairs, seeking enforcement of the decision of 4 July 1998. Allegedly, each time she has approached the authority in the matter she has been told that there was not yet any temporary accommodation available to L.O. and that she should "wait until April 1999". The Chamber has not been informed of any developments in the enforcement proceedings.

B. Relevant legislation

1. The 1994 Law on Abandoned Apartments

19. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments. This Decree was adopted by the Assembly of the Republic of Bosnia and Herzegovina as a law on 1 June 1994 ("the old Law"; see paragraph 1 above). The Law governed the re-allocation of occupancy rights over socially-owned apartments which had been abandoned. On 4 April 1998 it was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new Law").

20. Under Article 1 of the old Law an occupancy right was to be suspended if the holder of that

right and the members of his or her household had abandoned the apartment after 30 April 1991. Article 2 defined an apartment as having been abandoned already if, even temporarily, it was not being used by the occupancy right holder or the members of his or her household. Article 3 provided for some exceptions to this definition, namely

> (a) where the occupancy right holder and members of his or her household had been forced to leave the apartment as a result of 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;
>
> (c) if the holder of the occupancy right and members of his or her household had resumed using the apartment either within seven days from the issuing of the declaration on the cessation of the state of war (if the holder of the right had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days from the issuing of this declaration (if he or she had been staying outside that territory);
>
> (d) if the holder of the occupancy right or members of his or her household had, within the terms of the requisite permission to stay abroad or in another place within the country, left the apartment for the purpose of effecting a private or business journey; had been sent as a representative of a state authority, enterprise, state institution or other organisation or association upon the request of, or with the approval of, a competent state authority; had been sent for medical treatment; or had joined the armed forces of the Republic of Bosnia and Herzegovina.

21. The Presidency of the Republic of Bosnia and Herzegovina declared the Republic of Bosnia and Herzegovina to be at war on 20 June 1992 (Official Gazette of the Republic, No. 7/92). The Decision on the Cessation of the State of War was taken on 22 December 1995 (Official Gazette of the Republic, No. 50/95). It was published on the Bulletin Board of the Presidency Building of the Republic in Sarajevo and entered into force on the same day. The issue of the Official Gazette comprising this decision was published on 5 January 1996.

22. A state organ, a holder of an allocation right, a political organisation, a social organisation, an association of citizens or a housing board could initiate proceedings seeking to have an apartment declared abandoned. The competent municipal housing authority was to decide on a request to this end within 7 days and could also *ex officio* declare an apartment abandoned. Failing a decision within this time limit, it was to be made by the Minister for Urban Planning, Construction and Environment (Articles 4-6 of the old Law). Interested parties could challenge a decision by the municipal organ before the same Ministry but an appeal had no suspensive effect.

23. An apartment declared abandoned could be allocated for temporary use to "an active participant in the fight against the aggressor against the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostile action. Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged under the threat of eviction to vacate the apartment at the end of that period and to place it at the disposal of the organ which allocated it (Articles 7-8).

24. If the holder of the occupancy right failed to resume using the apartment within the applicable time limit laid down in Article 3 read in conjunction with Article 10, he or she was to be regarded as having abandoned the apartment permanently. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10).

2. The 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments

25. The Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new Law") entered into force on 4 April 1998. According to this legislation all administrative, judicial and other decisions terminating occupancy rights on the basis of regulations issued under the old Law shall be null and void. Nevertheless, all decisions establishing a right of temporary occupancy shall

remain effective until revoked in accordance with the new Law. Moreover, all decisions establishing a new occupancy right shall remain in force unless revoked in accordance with the new Law (Article 2). The holder of an occupancy right in respect of an apartment which has been declared abandoned or a member of his or her household is referred to in the new Law as "the occupancy right holder" (Article 3(1)). The holder of a newly allocated occupancy right based either on a decision of the holder of the right of allocation or on a contract is referred to as "the current occupant" (Article 3(6)).

26. The occupancy right holder shall be entitled to seek his or her reinstatement into the apartment at a certain date which must not be earlier than 90 days and no later than one year from the submission of the claim (Articles 3, 4 and 7). The competent authority shall decide on such a repossession claim within 30 days (Articles 6 and 7). The decision shall be delivered to the occupancy right holder, the holder of the allocation right and the current occupant within five days from its issuance. An appeal lies to the Cantonal Ministry for Housing Affairs within 15 days from the date of receipt of the decision. An appeal shall not suspend the execution of the decision (Article 8). In no event shall a failure, either of the cantonal authorities or the holder of the allocation right, to meet their obligations under Article 3, or a failure of "the current occupancy right holder" to accept another apartment, delay the attempts of "an occupancy right holder" to reclaim his or her apartment (Article 3(9)).

27. If the apartment is occupied without a legal basis or was vacant when the new Law entered into force, the occupancy right holder shall be granted repossession of the apartment without any restriction and any temporary user shall be evicted (Article 3(3)). A person who is temporarily occupying the apartment and whose housing needs are otherwise met shall vacate the apartment within 90 days from the decision pursuant to Article 6 (Article 3(4)). If his or her housing needs are not otherwise met, he or she shall be provided with accommodation in accordance with the Law on the Taking Over of the Law on Housing Relations. In such a case the period within which the apartment must be vacated shall not be shorter than 90 days from the issuance of the decision pursuant to Article 6. The apartment must be vacated before the day of the intended return of the occupancy right holder but the intended return must not be sooner than 90 days from the date when the claim for repossession was submitted (Article 3(5) and Article 7(2) of the new Law).

28. In exceptional circumstances the deadline for vacating an apartment may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation provides the cantonal administrative authority with detailed documentation about the efforts to secure alternative accommodation and if the cantonal authority finds that there is documented lack of available housing. In every individual case, the requirements of the Convention and its Protocols must be met, and the occupancy right holder must be notified of the decision extending the deadline, including its reasoning, 30 days before the initial deadline expires (Article 7(3) of the new Law).

29. If "a person occupying the apartment" fails to comply with a decision ordering its vacation, the competent administrative body shall take enforcement measures at the request of the occupancy right holder (Article 11).

30. According to Article 7 of the new Law, a decision within the meaning of Article 6 shall contain a confirmation that the claimant is the holder of the occupancy right; a decision granting repossession of the apartment to the occupancy right holder if the dwelling is temporarily occupied by someone else, is vacant or is occupied without legal basis; a decision terminating the right of temporary occupancy if the apartment is in temporary use; a time limit by which a temporary user or another person occupying the apartment shall vacate it; and a decision as to whether the temporary user is entitled to accommodation in accordance with the Law on Housing Relations. Under Article 10 of the Instruction of 30 April 1998 on the Application of Article 4 of the new Law, the authority issuing the decision within the meaning of Article 6 of the new Law shall verify the status of the occupancy right; verify whether the apartment is uninhabitable, vacant or occupied; and verify the status of any current occupant (illegal, temporary occupant or person having been living in the apartment prior to 7 February 1998 on the basis of an occupancy right acquired before that date). Contracts on the use of apartments declared abandoned pursuant to regulations issued under the old Law and decisions on the allocation of such an apartment shall be null and void, if concluded or issued after 7 February 1998 (Article 16 of the new Law).

3. The Law on Administrative Proceedings

31. Under Article 139 of the Law on Administrative Proceedings (Official Gazette of the Federation, No. 2/98) the competent administrative authority may issue a decision following summary proceedings when the facts are not in dispute. Under Article 200 the competent administrative authority issues a decision on the basis of the facts established in ordinary administrative proceedings. Under Article 275 the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon receipt of a request to this effect. Article 216(3) provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit.

IV. COMPLAINT

32. The applicant complains that her fundamental rights have been violated due to the fact that she cannot return to her apartment.

V. SUBMISSIONS OF THE PARTIES

1. The respondent Party

33. As to the admissibility of the case, the Federation states that the new Law provides for the possibility to claim the repossession of an apartment declared abandoned and has therefore provided an effective remedy which the applicant has not yet exhausted.

34. As for the merits, the Federation further argues that Article 1 of Protocol No. 1 to the Convention is not applicable because the applicant's occupancy right could not be regarded as a property right according to national legislation. In the alternative, it is argued that the interference with the applicant's property rights was justified, given the need to provide alternative accommodation to a temporary occupant, who could no longer inhabit his dwelling due to the hostilities.

2. The applicant

35. The applicant maintains her complaint.

VI. OPINION OF THE CHAMBER

A. Admissibility

36. Before considering the merits of this case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

37. The Chamber notes *proprio motu* that the applicant's apartment was declared abandoned prior to the entry into force of the Agreement on 14 December 1995. The Chamber observes, however, that the applicant's grievance relate to a situation which has continued up to date, namely the impossibility for her to return to her pre-war dwelling. The Chamber is therefore competent *ratione temporis* to examine the case in so far as this situation has continued past 14 December 1995. In doing so the Chamber can also take into account, as a background, events prior to that date.

38. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the case of *Blentić v. Republika Srpska* (Case No. CH/96/17, decision of 3 December 1997, paragraphs 19-21, with further reference) the Chamber considered this admissibility criterion in light of the corresponding requirement in Article 26 of the Convention to exhaust domestic remedies. The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The

Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

39. In the present case the Federation objects to its admissibility on the ground that the domestic remedy provided by the new Law has not yet been exhausted. It is not for the Chamber to examine the new Law in general, in isolation from the manner in which it is being applied by the competent authorities. Accordingly, whilst the new Law has afforded a remedy which might in principle qualify as an effective one within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to her apartment, the Chamber must ascertain whether, in the case now before it, this remedy can also be considered effective in practice.

40. The Chamber first notes that the applicant indeed initiated proceedings under the 1998 Law with a view to being reinstated into her apartment. However, as far as the Chamber is aware, the resultant decision confirming her occupancy right and ordering the temporary occupant to vacate the apartment within 90 days has not been executed despite the applicant's enforcement request which has been pending since September 1998. Nor has the respondent Party showed the documented existence of any exceptional circumstances within the meaning of Article 7(3) of the new Law which have warranted an extension of the temporary occupant's deadline for vacating the apartment. At any rate, it has not been shown that the applicant was notified within the time limit stipulated in Article 7(3) of any decision to that end.

41. In these particular circumstances the Chamber is satisfied that the applicant could not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy provided by domestic law.

42. As no other ground for declaring the case inadmissible has been established, the Chamber declares the application admissible.

B. Merits

43. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose 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.

1. Article 8 of the Convention

44. Article 8 of the Convention reads, as far as relevant, as follows:

> "Every one has the right to respect for ..., his home ...
>
> 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."

45. The applicant did not mention Article 8 expressly in her complaint. However, following its decision in *Kevešević* (CH/97/46, decision of 10 September 1998, paragraphs 36-58) the Chamber will nevertheless examine the case under this provision.

46. It is the Federation's assertion that it was necessary in the public interest to declare the apartment abandoned and to allocate it temporarily to another person, whose dwelling had been badly damaged during the war.

47. The Chamber notes that at the outset the applicant was prevented from returning to her pre-

war apartment due to the hostilities. After the end of the war she remained unable to return to her dwelling, as meanwhile it had been declared temporarily abandoned and temporarily allocated to L.O. As from 1996 the applicant repeatedly contested these decisions of 1993 but was unable to obtain any final decision in her favour. In these circumstances and bearing in mind its competence *ratione temporis* (see paragraph 37 above) the Chamber cannot but find that after 14 December 1995 up to the entry into force of the new Law the authorities, by applying the old Law, continued to consider the applicant's apartment abandoned, thereby refusing to allow her to return there.

48. The Chamber has already found that the links which an applicant facing similar difficulties retained to his dwelling sufficed for this to be considered his "home" for the purposes of Article 8 paragraph 1 of the Convention (see, *inter alia*, the aforementioned decision in *Kevešević,* paragraphs 39-42; European Court of Human Rights, *Gillow v. United Kingdom*, judgment of 24 November 1986, Series A No. 109, paragraph 46; *Buckley v. United Kingdom*, judgment of 25 September 1996, Reports of Judgements and Decisions 1996-IV, fasc. 16, paragraph 54). The Chamber furthermore considers that there has been an ongoing interference with the present applicant's right to respect for her home.

49. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (cf. the aforementioned *Gillow* judgment, loc.cit., paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

50. The Chamber has already found that the provisions of the old Law, as applied also in the present case, failed to meet the standards of "law" as this expression is to be understood for the purposes of Article 8 of the Convention (see the *Kevešević* decision, paragraphs 50-58). Accordingly, this provision was violated already by virtue of the authorities' effective refusal after 14 December 1995 to allow the applicant to return to her apartment.

51. In so far as the present case relates to the application of the new Law, the Chamber recalls its above findings relating to the admissibility of the case (see paragraphs 40-41 above). It is true that the applicant received a decision pursuant to the new Law, confirming her occupancy right. The current occupant of her apartment, L.O., was ordered to vacate the apartment within 90 days but was considered entitled to alternative accommodation. In spite of the applicant's enforcement request pursuant to Article 11 of the new Law the decision in the applicant's favour has not been executed. Judging from the information allegedly received by the applicant, this non-enforcement is due to the lack of alternative accommodation for L.O. However, as the Chamber has already noted, it has not been shown that the applicant was notified, at least 30 days before the end of L.O.'s 90-day period for vacating the apartment, of any documented exceptional circumstances warranting an extension of the latter time limit. It follows that, in addition to the violation of Article 8 of the Convention due to the fact that the refusal, by application of the old Law, to allow the applicant to return to her apartment was not "in accordance with the law", there is an ongoing violation of the same provision as the procedure under the new Law has not been "in accordance with the law" either (cf. *Eraković v. The Federation of Bosnia and Herzegovina*, CH/97/42, decision of 15 January 1999, paragraph 51). On this point the Chamber would add that under Article 3(9) of the new Law it is explicitly stipulated that a failure of, for example, the cantonal authorities to meet their obligations under Article 3 shall not hamper the possibility of an occupancy right holder (such as the applicant) to reclaim an apartment.

52. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given both the refusal under the old Law to allow the applicant to return to her apartment and the failure after the entry into force of the new Law to execute the decision of 4 July 1998 effectively entitling her to return to that dwelling.

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

53. The applicant complains, in essence, that her right to peaceful enjoyment of her possession has been and continues to be violated as a result of the decision declaring her apartment abandoned, the allocation to L.O. of a temporary right to use the apartment and the effective

prevention of the applicant's return into this dwelling. The Chamber will examine this complaint under Article 1 of Protocol No. 1 to the Convention which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and 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."

54. The Federation argues that Article 1 of Protocol No. 1 is inapplicable. In any case, there has been no violation of this provision, as the temporary allocation of the applicant's apartment to L.O. was necessary in the public interest so as to solve an urgent housing problem.

55. The Chamber has already found that an occupancy right can indeed be regarded as a "possession", it being a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy an apartment indefinitely (see *M.J. v. The Republika Srpska*, No. CH/96/28, decision of 7 November 1997, paragraph 32 and the aforementioned *Kevešević* decision, paragraph 73). In those cases the Chamber recalled, *inter alia*, that the European Court of Human Rights has given a wide interpretation to the concept of "possessions", holding that this notion covers a wide variety of rights and interests with an economic value (see, e.g.*, Van Marle v. Netherlands* judgment of 26 June 1986, Series A No. 101, paragraph 41*; Pressos Compania Naviera S.A. v. Belgium* judgment of 20 November 1995, Series A No. 332, paragraph 31).

56. The Chamber has further found that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1 (see the above-mentioned *Kevesević* decision, paragraph 80). The Chamber finds no reason to differ in the present case. Accordingly, this provision was violated already by virtue of the authorities' effective refusal after 14 December 1995 up to 4 July 1998 to recognise the applicant's occupancy right and to allow her to return to her apartment.

57. The applicant's grievance under this provision extends to the failure of the authorities to enforce the decision effectively entitling her to return to her apartment. The Chamber has already noted (in paragraphs 40 and 51 above) that this non-enforcement is not in compliance with the new Law. In addition to the violation stemming from the refusal to allow the applicant to return to her apartment for want of recognition of her occupancy right, there has thus been a continuing violation of her right to the peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 in so far as the procedure under the new Law has not been "subject to the conditions provided for by law" either (cf. the aforementioned *Eraković* decision, paragraph 60).

58. Accordingly, the Chamber concludes that Article 1 of Protocol No. 1 has been violated, given both the refusal under the old Law to allow the applicant to return to her apartment and the failure after entry into force of the new Law to enforce the decision of 4 July 1998 effectively entitling her to return to that dwelling.

VII. REMEDIES

59. 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 established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries) as well as provisional measures.

60. The Chamber recalls that in accordance with its order for the proceedings in this case the applicant was afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party. The applicant has not lodged any such claim

but requests the Chamber to order that she be effectively reinstated into her apartment.

61. The Chamber considers it appropriate to order the Federation to take all necessary steps to enable the applicant, whose occupancy right has already been confirmed under the new Law, to return swiftly to her apartment.

VIII. CONCLUSIONS

62. For the above reasons, the Chamber decides:

1. unanimously, that the refusal to allow the applicant to return to her apartment and the failure to enforce the decision of 4 July 1998 confirming her occupancy right constitute a violation by the Federation of her right to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

2. unanimously, that the refusal to allow the applicant to return to her apartment and the failure to enforce the decision of 4 July 1998 confirming her occupancy right also constitute a violation by the Federation of her right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;

3. unanimously, to order the Federation to take all necessary steps to enable the applicant to return swiftly to her apartment; and

4. unanimously, to order the Federation to report to it by 12 April 1999 on the steps taken by it to comply with the above order.

(signed)
Leif BERG
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 concurring opinion by MM. Vlatko Markotić and Želimir Juka:

CONCURRING OPINION OF MM. VLATKO MARKOTIĆ AND ŽELIMIR JUKA

The applicant, Dušanka Onić, acquired her occupancy right according to the Law on Housing Relations, which was in force on the date of adoption of the Chamber's decision. Article 44 of this Law prescribes the circumstances in which an occupancy right may be lost. In accordance with this Law the occupancy right cannot be lost by visiting parents during a weekend. Likewise the Law on Abandoned Apartments did not provide for an apartment to be declared abandoned in such circumstances.

We agree with the conclusions of, and the remedies ordered by the Chamber, and in our opinion the applicant is not obliged to acquire her occupancy right again because she has not lost it to begin with.

The above explanation is based on our separate concurring opinion in the case *Eraković v. the Federation of Bosnia and Herzegovina* (Case No. CH/97/42).

(signed) Vlatko MARKOTIĆ

(signed) Želimir JUKA