DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 15 JANUARY 1999

Velimir OSTOJIĆ AND 31 OTHER JNA CASES

against

BOSNIA AND HERZEGOVINA
AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 January 1999 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Vlatko MARKOTIĆ
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ

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

Having considered the admissibility and merits of case no. CH/97/82 and the 31 other applications 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 and listed in part III B of this decision;

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

I. INTRODUCTION

1. The present decision concerns 32 so-called JNA cases considered to be directed against the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The names of the individual applicants and the corresponding case numbers are listed in part III B of the decision.

2. In 1991 or 1992 the applicants contracted to buy apartments from the Yugoslav National Army ("the JNA"). The contracts were annulled by legislation passed shortly after the General Framework Agreement for Peace in Bosnia and Herzegovina entered 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 for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and also allege violations of Articles 6 and 13 of the Convention.

3. These 32 cases resemble the cases of *Medan and Others v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina* (cases nos. CH/96/3, 8 and 9, decision on the merits of 7 November 1997, Decisions on the Admissibility and Merits 1996-1997, p. 53) and the *16 JNA cases* (decision on the admissibility and the merits of 12 June 1998, Decisions January-June 1998, p. 37).

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between November 1997 and February 1998 and registered between November 1997 and April 1998. Some applicants are represented by lawyers. Applicant Miskin (CH/97/102) is represented by his father.

5. Some of the applications were directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, whereas others were 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 in all cases engage the responsibility of both the State and the Federation of Bosnia and Herzegovina. It therefore decided to treat all cases as being directed against both the State and the Federation (see also the decision in the *16 JNA* cases, loc. cit., paragraph 4 and the *Medan and Others* decision, loc. cit., paragraphs 28-30 and 44-47).

6. On 7 April and 15 May 1998 the Second Panel decided pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the applications to the respondent Parties for observations on their admissibility and merits.

7. The Federation of Bosnia and Herzegovina submitted observations between April and June 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied between July and October 1998. In accordance with the Chamber's order for the proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party.

8. The Second Panel deliberated on the admissibility and the merits of the cases on 18 December 1998 and on 11 January 1999. On the first-mentioned date the Panel decided, under Rule 34 of its Rules of Procedure, to join the applications. On 11 January 1999 the Panel also considered the applicants' compensation claims and on 13 January 1999 it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Relevant domestic law

9. The apartments occupied by the applicants were all socially owned property over which the JNA had jurisdiction. Such property was considered to belong to society as a whole. Each applicant enjoyed an occupancy right in respect of his or her apartment. An occupancy right was a right, subject to certain conditions, to occupy an apartment on a permanent basis.

10. Each of the applicants contracted to purchase his or her apartment under the Law on Securing

Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 84/90). This Law came into force on 6 January 1991. In the following years a number of Decrees with force of law as well as laws proper were issued by the Government of the 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 and others*, loc. cit., paragraphs 9-13). These legal instruments 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 (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, No. 4/92). Subsequently, a Decree with force of law, issued on 3 February 1995 by the Presidency of the Republic (Official Gazette of the Republic of Bosnia and Herzegovina, No. 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 entered 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 (Official Gazette, No. 50/95) to the effect 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 retroactively invalid. This Decree entered 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 25 January 1996 (Official Gazette, No. 2/96).

11. The Decree of 22 December 1995 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 the Law on the Sale of Apartments with an Occupancy Right came into force (Official Gazette of the Federation, No. 27/97). This law was amended by a law of 23 March 1998 (Official Gazette, No. 11/98). Neither law affected the annulment of the present applicants' contracts.

B. The individual cases

12. The applicants are former employees of the JNA. The facts of the cases as they appear from the applicants' respective submissions and the documents in the case file are not in dispute and may be summarised as follows. It should be noted that the amount paid by each applicant at or around the time of contracting to purchase an apartment (henceforth "the purchase price") does not necessarily reflect the officially determined price of the dwelling. This is because the applicants were only obliged to pay the difference between the last-mentioned price and their earlier accumulated contributions to the JNA Housing Fund. For instance, in CH/98/158 the applicant was required to pay only 10 dinars on top of such a contribution.

1. The case of Mr. Velimir OSTOJIĆ (CH/97/82)

13. On 14 February 1992 the applicant concluded a purchase contract for a JNA apartment at Envera Sehovića 3/VI in Sarajevo, having paid the purchase price 209.126 dinars on 7 February 1992.

14. On 18 March 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995. The Court's decision stated that no special appeal was allowed. The proceedings have remained adjourned since.

2. The case of Mr. Alojz ZBAČNIK (CH/97/84)

15. On 27 February 1992 the applicant concluded a purchase contract for a JNA apartment at Topal Osman Paše 3/II in Sarajevo. The applicant did not have to pay anything for the apartment, because his contribution to the JNA Housing Fund was higher than the determined price (608.843 dinars).

16. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

3. The case of Mrs. Mila GRBAVAC (CH/97/86)

17. On 28 February 1992 the applicant concluded a purchase contract for a JNA apartment at Meše Selimovića Boulevard 1/XIV in Sarajevo, having paid the purchase price (287.500 dinars) on 14 February 1992.

18. On 15 February 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that she was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 27 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995. The proceedings have remained adjourned since.

4. The case of Mr. Tomo MIHALJEVIĆ (CH/97/88)

19. On 14 March 1992 the applicant concluded a purchase contract for a JNA apartment at Kolodvorska 13/XI in Sarajevo, having paid the purchase price (98.887 + 270.000 dinars) on 13 March and 7 February 1992.

20. On 18 March 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995. The Court's decision stated that no special appeal was allowed. The proceedings have remained adjourned since.

5. The case of Mr. Zdravko NEŠOVANOVIĆ (CH/97/90)

21. On 27 February 1992 the applicant concluded a purchase contract for a JNA apartment at Topal Osman Paše 5/III in Sarajevo, having paid the purchase price (62.721 dinars) on 6 February 1992.

22. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

6. The case of Mr. Dedo BIKIĆ (CH/97/92)

23. On 28 February 1992 the applicant concluded a purchase contract for a JNA apartment at Topal Osman Paše 5/IV in Sarajevo, having paid the purchase price (54.000 + 285 dinars) on 29 January and 28 February 1992.

24. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

7. The case of Mr. Fadil HRBENIĆ (CH/97/94)

25. On 3 March 1992 the applicant concluded a purchase contract for a JNA apartment at Topal Osman Paše 5/p in Sarajevo, having paid the purchase price (389.568 dinars) on 13 February 1992.

26. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

8. The case of Mrs. Sultanija ĆATO (CH/97/96)

27. On 9 March 1992 the applicant concluded a purchase contract for a JNA apartment at Alojza Beneca 2/IV in Sarajevo, having paid the purchase price (113.432 dinars) on 13 February 1992.

28. It appears from the file that the applicant has never instituted any court proceedings to have

herself registered as the owner of the apartment.

9. The case of Mr. Tadija BREKALO (CH/97/100)

29. On 13 November 1991 the applicant concluded a purchase contract for a JNA apartment at Džemala Bijedića 42 in Sarajevo and paid the purchase price due (265.106 dinars) on 3 December 1991.

30. The contract was certified by the First Instance Court II in Sarajevo. The applicant orally requested that the contract be entered in the Land Registry, but in March 1992 he was told that it was prohibited to register the purchased JNA apartments. In 1994 he again requested that his apartment be registered, but was given the same reply.

10. The case of Mr. Ljubo MISKIN (CH/97/102)

31. On 10 February 1992 the applicant concluded a purchase contract for a JNA apartment at Omera Maslića 6-a/III in Sarajevo and paid the purchase price due (1.295.295,50 dinars) on 13 February 1992.

32. On 3 November 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 29 March 1995 the Court issued a decision adjourning his case under the Decree of 3 February 1995. The Court's decision stated that no special appeal was allowed. The proceedings have remained adjourned since.

11. The case of Mr. Zejnil BRKOVIĆ (CH/98/116)

33. On 29 February 1992 the applicant concluded a purchase contract for a JNA apartment at Kolodvorska 13/XIII in Sarajevo, having paid the purchase price (81.717 dinars) on 11 February 1992.

34. On 2 December 1993 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. He received invitations to appear before the Court on several occasions between January 1994 and February 1995 but the defendant never appeared. On 10 February 1995 the Court issued a decision adjourning the case under the Decree of 3 February 1995. The decision stated that no special appeal was allowed. The proceedings have remained adjourned since.

12. The case of Mr. Ilija GLEĐA (CH/98/118)

35. On 25 February 1992 the applicant concluded a purchase contract for a JNA apartment at Kolodvorska 13 in Sarajevo, having paid the purchase price (82.000 dinars) on 10 February 1992.

36. The applicant later instituted civil proceedings in the First Instance Court I in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. The Court issued a decision on an unknown date adjourning the case under the Decree of 3 February 1995. The proceedings have remained adjourned since.

13. The case of Mr. Jure KAURLOTO (CH/98/122)

37. On 19 March 1992 the applicant concluded a purchase contract for a JNA apartment at Hasana Brkića 38 in Sarajevo, having paid the purchase price (15.000 dinars) on 7 February 1992.

38. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

14. The case of Mr. Jordan REMENOVIĆ (CH/98/128)

39. On 20 March 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja Bosanskih Vladara 22 in Tuzla. The purchase price (576.676 dinars) was paid on 12 February 1992 by means of his contribution to the JNA Housing Fund.

40. The applicant has not initiated any court proceedings to have himself registered as the owner of the apartment.

15. The case of Mr. Novica RADAN (CH/98/134)

41. On 28 February 1992 the applicant concluded a purchase contract for a JNA apartment at Patriotske Lige 38 in Sarajevo, having paid the purchase price (53.185 dinars) on 12 February 1992.

42. The applicant has not initiated court proceedings to have himself registered as the owner of the apartment.

16. The case of Mr. Redžo MEHANOVIĆ (CH/98/144)

43. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment in Tuzla at Aleja Bosanskih Vladara 22, having paid the purchase price (11.000 dinars) on 11 February 1992.

44. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

17. The case of Mr. Smajo MAŠOVIĆ (CH/98/146)

45. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja Bosanskih Vladara 18 in Tuzla, having paid the purchase price (26.000 dinars) on 1 February 1992.

46. The applicant has not initiated any court proceedings to have himself registered as the owner of the apartment.

18. The case of Mr. Alija ZOLETIĆ (CH/98/152)

47. The applicant concluded a purchase contract for a JNA apartment on 3 April 1992 and paid the purchase price (712.897 dinars).

48. The applicant did not initiate any court proceedings to have himself registered as the owner of the apartment. On 21 August 1996 he died but his widow has stated that she wishes to pursue the proceedings before the Chamber.

19. The case of Mr. Risto MILIĆEVIĆ (CH/98/154)

49. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja Bosanskih Vladara 25/III in Tuzla, having paid the purchase price (150.000 + 100.000 dinars) on 3 February 1992.

50. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

20. The case of Mr. Džemal MULIĆ (CH/98/156)

51. On 11 February 1992 the applicant concluded a purchase contract for a JNA apartment at Topal Osman Paše 18/VI in Sarajevo and paid the purchase price due (588.744 dinars) on 12 February 1992. The contract was certified by the Civil Administration of Social Income of the Municipality of Novo Sarajevo on 11 February 1992.

52. In March 1992 the applicant submitted a request for registration to the First Instance Court II in Sarajevo, but he never received any response.

21. The case of Mrs. Boja ANTONIĆ (CH/98/158)

53. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at M. Tita 62 in Tuzla, having paid 10 dinars on 31 January 1992.

54. It appears from the file that the applicant has never instituted any court proceedings to have herself registered as the owner of the apartment.

22. The case of Mr. Smail HADŽIĆ (CH/98/162)

55. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Dr. Ivana Ribara 15 in Tuzla, having paid the purchase price (1.000 dinars) on 28 January 1992.

56. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

23. The case of Mr. Tibor BEVC (CH/98 /164)

57. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Armije BiH 23 in Tuzla, having paid the purchase price on 13 February 1992 (5.549,90 dinars) and 30 April 1992 (36.000 dinars).

58. The applicant has not initiated any court proceedings to have himself registered as the owner of the apartment.

24. The case of Mr. Slavko DAKIĆ (CH/98/176)

59. The applicant concluded an undated purchase contract for a JNA apartment at Šehida 31 in Travnik and paid the purchase price (411.666 dinars) on 31 March 1992.

60. The applicant initiated court proceedings at the Court of First Instance in Travnik to have himself registered as the owner of the apartment on 18 January 1995. These proceedings were adjourned on 31 May 1996 pursuant to the Decree of 3 February 1995.

25. The case of Mr. Nikola IVKOVIĆ (CH/98/182)

61. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Armije BiH 17 in Tuzla, having paid the purchase price on 6 March 1992 (460.000 dinars).

62. The applicant has not initiated any court proceedings to have himself registered as the owner of the apartment.

26. The case of Mr. Džemal MUMINOVIĆ (CH/98/184)

63. On 5 April 1992 the applicant concluded a purchase contract for a JNA apartment at Veljka Vlahovića 98 in Tuzla, having paid the purchase price (220.000 dinars) on 13 February 1992.

64. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

27. The case of Mrs. Marija CVETKOVIĆ (CH/98/186)

65. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment in Tuzla at Armije BiH 19, having paid the purchase price (540.000 dinars) on 3 February 1992.

66. It appears from the file that the applicant has never instituted any court proceedings to have herself registered as the owner of the apartment.

28. The case of Mr. Halid KRIVOŠIJA (CH/98/188)

67. On 4 April 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja Bosanski Vladara 20 in Tuzla. The purchase price (405.654 dinars) was paid on 2 March 1992 by means of his contribution to the JNA Housing Fund.

68. The applicant has not initiated any court proceedings to have himself registered as the owner of the apartment.

29. The case of Mr. Mitar RAJIĆ (CH/98/236)

69. On 31 March 1992 the applicant concluded a purchase contract for a JNA apartment at Envera Sehovića 7/VIII in Sarajevo, having paid the purchase price (200.463 dinars) on 12 February and 5 March 1992.

70. On 28 March 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court adjourned his case under the Decree of 3 February 1995. The decision stated that no special appeal was allowed. The proceedings have remained adjourned since.

30. The case of Mr Franjo MIOĆ (CH/98/238)

71. On 14 February 1992 the applicant concluded a purchase contract for a JNA apartment in Sarajevo at Envera Sehovića 28/III and paid the purchase price (245.000 dinars).

72. On 18 March 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court adjourned his case under the Decree of 3 February 1995. The proceedings have remained adjourned since.

31. The case of Mr. Zvonimir MILENKOVIĆ (CH/98/244)

73. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Slatina 3 in Tuzla, having paid the purchase price (110.000 dinars) on 12 February 1992.

74. The applicant has not initiated any court proceedings to have himself registered as the owner of the apartment.

32. The case of Mrs. Jadranka MILETIĆ (CH/98/256)

75. On 10 February 1992 the applicant concluded a purchase contract for a JNA apartment at Patriotska Lige 38 in Sarajevo and paid the purchase price (357.000 dinars) on 14 February 1992.

76. The applicant has not initiated any court proceedings to have herself registered as the owner of the apartment.

IV. COMPLAINTS

77. The applicants essentially complain that the retroactive annulment of their purchase contracts and the compulsory adjournment of their civil proceedings under the Decree No. 5/95 (see paragraph 10 above) involved violations of their rights under Article 6 and 13 of the Convention and Article 1 of Protocol 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The Respondent Parties

1. Bosnia and Herzegovina

78. No observations have been received from the State of Bosnia and Herzegovina.

2. The Federation of Bosnia and Herzegovina

79. The Federation of Bosnia and Herzegovina primarily refers to the liability of the State of Bosnia and Herzegovina for the impugned measures. Regarding the succession of the former SFRJ, the Federation maintains that it is impossible for the Federation to fulfil its obligations flowing from the Chamber's decision in *Medan and others* (loc. cit.).

80. It is further alleged that the issue at stake in these cases is the constitutionality of a law and not the infringement of human rights. These cases would therefore fall within the jurisdiction of the Constitutional Court. Moreover, the impugned legal acts were designed to support those citizens who were prevented from buying JNA apartments, and to protect State property. The measures were therefore justified under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

B. The Applicants

81. The applicants maintain their complaints. Regarding the Federation's argument that other citizens were not treated equally to those who had the opportunity to purchase JNA apartments, the applicants stress the fact that they were all employees of the former JNA and had contributed to the Army Housing Fund. The apartments they purchased were constructed with means from this fund and not from the Housing Fund of the then Republic of Bosnia and Herzegovina. Consequently, the applicants cannot be compared with those who did not contribute to the Army Housing Fund.

VI. OPINION OF THE CHAMBER

A. Admissibility

82. Before considering the cases on their merits the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) 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 ...
>
> (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, ... "

83. The Federation of Bosnia and Herzegovina argues that the present cases would fall within the jurisdiction of the Constitutional Court and presumably be incompatible with the Agreement within the meaning of Article VIII (2) (c) (see paragraph 80 above). However, the Chamber recalls that it is competent to consider "alleged and apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto" (Article II(2)(a) of the Agreement). The Federation's argument must therefore be rejected.

84. 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 the admissibility criterion in Article VIII (2) (a) of the Agreement in light of the corresponding requirement in Article 26 of the

Convention to exhaust domestic remedies. It noted that 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.

85. In the present case neither Party has argued, for the purposes of Article VIII(2)(a) of the Agreement, that an effective remedy was available to the applicants. The Chamber observes that the Decree of 15 February 1992 provided for a temporary prohibition of the sale of socially owned property. Under the Decree of 3 February 1995 courts and other state authorities were to 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 retroactively declared invalid (see paragraphs 10-11 above).

86. The experience of those applicants who instituted court proceedings indicates that redress was not available through the courts. Accordingly, the Chamber finds that none of the applicants had any effective remedies available to them within the meaning of Article VIII(2)(a) of the Agreement.

87. Neither Party has raised any other objection to the admissibility of the applications in light of the criteria set out in Article VIII(2) of the Agreement.

88. The Chamber concludes therefore, especially in light of the experience of those applicants who instituted court proceedings, that all the applications, including those where the applicants did not institute any such proceedings, are admissible.

B. Merits

89. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above indicate a breach by one or both of the respondent Parties of its or their 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 applicants' purchase contracts and the compulsory adjournment of any related civil proceedings constitutes a breach of the applicants' rights under Article I of the Agreement.

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

90. The applicants 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 a breach of Article 1 of Protocol No. 1 to the Convention, 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."

91. As to whether, at the time when the December 1995 Decree came into force, the applicants had any rights under their contracts which constituted "possessions" for the purposes of Article 1 of Protocol No. 1, the Chamber refers to its decisions in the cases of *Medan and Others* and in the *16 JNA* cases (loc. cit., paragraph 33 and paragraphs 59-61, respectively). The answer to this question is therefore affirmative. The effect of the Decree was to annul those rights and the applicants were therefore deprived of their possessions. 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".

92. The Federation of Bosnia and Herzegovina argues that the infringed legal acts were designed to equalise the applicants' positions, to support those who were prevented from buying JNA apartments and to protect State property. These acts would therefore correspond with the requirements of Article 1 paragraph 2 of Protocol No. 1 to the Convention and justify the measures concerned in the present cases.

93. The applicants stress the fact that they were all employees of the former JNA and had contributed to the Army Housing Fund. The apartments they purchased were constructed with means from this fund and not from the Housing Fund of the then Republic of Bosnia and Herzegovina. Consequently, the applicants cannot be compared with those who had not contributed to the Army Housing Fund.

94. The Chamber finds that there is no material distinction between the present cases and those of *Medan and Others* and the *16 JNA* cases (loc. cit.). Moreover, the new legislation issued after the Chamber's decision in *Medan and Others* (see paragraph 12 above) did not change the present applicants' situation. Accordingly, the Chamber finds, as in the earlier JNA cases decided on the merits, that the present applicants were also 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

95. Those applicants who instituted proceedings complain that the civil proceedings instituted with a view to obtaining recognition of their ownership and registration in the Land Registry, have been compulsorily adjourned by virtue of the February 1995 Decree. They allege a breach of Article 6 of the European Convention on Human Rights in this respect. Those 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. Article 6 reads, as far as relevant, as follows:

> "1. In the determination of his civil rights and obligations….everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…"

96. As in the cases of *Medan and Others* and the *16 JNA* cases (loc. cit.) the Chamber notes that the court proceedings in question either were or would have been adjourned after the Decree in question entered into force. As far as the Chamber is aware, this situation has continued up to this day. Accordingly, there is a continuing deprivation of the applicants' right of access to court for the purpose of having their civil claims determined, as guaranteed by Article 6 (see the Chamber's decisions in the cases of *Medan and Others* and the *16 JNA cases*, paragraphs 40 and 64, respectively, and European Court of Human Rights in the case of *Golder v. United Kingdom*, judgement of 21 February 1975, Series A No. 18, paragraphs 35-36). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of Protocol No. 1 to the Convention. It follows 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 or would have continued since 14 December 1995, when the Agreement came into force. The Chamber would add that any proceedings initiated would by now have lasted beyond a "reasonable time" due to the February 1995 Decree.

3. Article 13 of the Convention

97. Some applicants 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. 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."

98. 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. The requirements of Article 13 are less strict than those of Article 6 and are absorbed by the latter (see, e.g., European Court of Human Rights, *Hentrich v. France* judgment of 22 September 1994, Series A No. 296, paragraph 65).

VII. REMEDIES

99. Under Article XI paragraph 1(b) of the Agreement the Chamber must also address the question what steps shall be taken by the respondent Party or Parties to remedy the breaches of the Agreement which it has found.

100. The Chamber notes that the legal situation remains essentially the same as that which it addressed in its decisions in the cases of *Medan and Others* and the *16 JNA* cases (loc. cit.). It is therefore appropriate to make orders similar to those issued in those cases.

101. The breaches of Article 1 of Protocol No. 1 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 this 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.

102. The Chamber will also order the Federation to take all necessary steps to lift the compulsory adjournment of the court proceedings instituted by certain of the applicants and which the Chamber has found to be in violation of Article 6 of the Convention, and to take all necessary steps to secure the applicants' right of access to court.

103. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for the proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party. The following applicants seek compensation:

104. Mr. Miskin (CH/97/102) claims "compensation for all legal costs, including his lawyer, and costs related to the damage to his health caused by the violation of his rights". No amounts have been specified.

105. Mr. Remenović (CH/98/128) claims compensation in the respective amounts of 10 DEM (German marks) for his lawyer; 5 DEM for the postal costs of submissions to the Chamber; 10.000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation; and 30.000 DEM for all traumas, maltreatment and intimidation suffered before, and for present sufferings and disrespect for the members of the former JNA.

106. Mr. Zoletić (CH/98/152) claims compensation in the respective amounts of 10 DEM for his lawyer; 5 DEM for the postal costs of submissions to the Chamber; 10.000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation; and 30.000 DEM for all traumas, maltreatment and intimidation suffered before, and for present sufferings and disrespect for the members of the former JNA.

107. Ms. Antonić (CH/98/158) claims compensation for mental stress, medical costs, legal counselling, and postal and phone costs, in the total amount of 2.000 KM (Konvertibilnih Maraka).

108. Mr. Hodžić (CH/98/162) reserves the right to claim compensation for future costs for representation and travel.

109. Mr. Bevc (CH/98/164) claims compensation, conditionally, for "any further illegal decision which would not recognise his ownership according to the purchase contract" (857 DEM/m^2 of floor surface). He makes an unconditional claim in the respective amounts of 10 DEM paid to his lawyer; 5 DEM for postal costs for submitting documents to the Chamber; 10.000 DEM for being branded "a

robber" in Ms. Nura Pinjo's observations on behalf of the Federation; and 30.000 DEM for all traumas, maltreatment and intimidation suffered before, and for present sufferings and disrespect shown by the organs of the Federation and its laws.

110. Mr. Dakić (CH/98/176) claims compensation in the following respective amounts for legal costs allegedly incurred on the basis of the Advocates' Tariff of the Federation: 450 DEM for the submission of a complaint of 18 January 1995; 450 DEM for his representation before the Court in Travnik on 31 May 1996; 450 DEM for the preparation of his application to the Chamber; and 450 DEM for the preparation of his statement in reply to the Federation.

111. Mr. Ivković (CH/98/182) filed his compensation claim out of time, explaining that he had been on a trip and that his neighbour had not delivered the Chamber's letter to him in time. He requests to be reimbursed the rebate, i.e. the difference between the purchase price paid in advance (460.000 dinars) and the price as finally determined in 1992 (453.397 dinars). He also claims compensation in the following respective amounts: 10 DEM paid to his lawyer; 8 DEM for postal costs of submissions to the Chamber; 10.000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation; and 30.000 DEM for all traumas, maltreatment and intimidation suffered before, and for present sufferings and disrespect shown by the Federation and its organs.

112. Mr. Krivošija (CH/98/188) requests to be reimbursed the difference between the purchase price and commission paid (407.654 dinars) and the price as finally determined (405.654 dinars). He also claims compensation in the following respective amounts: 10 DEM paid to his lawyer; 8 DEM for postal costs of submissions to the Chamber; 10.000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation; and 30.000 DEM for all traumas, maltreatment and intimidation suffered before, and for present sufferings and disrespect shown by the Federation and its organs.

113. Mr. Milenkovič (CH/98/244) claims compensation in the amount of 10 DEM paid to his lawyer and 20 DEM for the forms and submissions to the Chamber (apparently for postage and photocopying).

114. The Chamber first recalls that its jurisdiction *ratione temporis* is limited to the period after the entry into force of the Agreement on 14 December 1995. This means that the Chamber cannot award any compensation for damage suffered before that date or relating to events occurring before that date. Compensation may be awarded in particular in respect of pecuniary or non-pecuniary (moral) damage as well as for costs and expenses incurred by the applicants in order to prevent the breach found or to obtain redress thereof. Any costs and expenses claimed should be specified (see, e.g., CH/96/30, *Damjanović* decision of 11 March 1998, Decisions and Reports January-June 1998, p. 27, paragraph 23).

115. The Chamber further recalls that it has already rejected a compensation claim lodged by an applicant unable to register himself as owner of his JNA apartment, considering that he had not been threatened with being evicted and had not attempted, for instance, to sell his apartment or use it as security for a loan or other matter (CH/96/8, *Bastijanović* decision of 15 July 1998, paragraph 15; cf,, *a contrario*, see CH/96/22, *Bulatović* decision of 15 July 1998, paragraph 18; both to be published in Decisions and Reports 1998). Moreover, for want of detailed evidence of any loss suffered, the Chamber has rejected claims for compensation on account of any adjournment past 14 December 1995 of court proceedings initiated by applicants for the purpose of their being registered as owners of JNA apartments in respect of which their contracts had been nullified (see the aforementioned decisions, paragraph 17).

116. Turning to the present cases, the Chamber notes that ten of the 32 applicants have made compensation claims in one form or another, some of them specifying the respective amounts of compensation claimed for pecuniary and non-pecuniary damage, others without specifying any such amounts. Certain applicants have claimed 10.000 DEM in compensation for being referred to, in a defamatory manner, as "robbers" in submissions made on behalf of the Federation and 30.000 DEM for other non-pecuniary damage ("traumas", "maltreatment" and "intimidation") allegedly suffered on account of disrespect shown by the Federation.

117. As for the claims for non-pecuniary damage in the amounts of 10.000 and 30.000 DEM, the Chamber considers that the present decision finding violations of the applicants' rights under the Convention constitutes adequate satisfaction (cf. the above-mentioned *Bulatović* decision, paragraph 18). The same is true for the applicants' other claims for non-pecuniary damage which are couched in different terms. The remaining parts of the compensation claims will be dealt with individually below.

118. The Chamber rejects as unsubstantiated the claim of applicant Miskin (CH/97/102) for compensation for legal costs.

119. The Chamber finds it appropriate to award applicants Remenović (CH/98/128) and Zoletić (CH/98/152) 15 KM each in compensation for costs and expenses.

120. The Chamber rejects as unsubstantiated the claim of applicant Antonić (CH/98/158) for compensation of costs relating to legal counselling. The Chamber finds it appropriate, however, to award him 10 KM in compensation for costs and expenses.

121. The Chamber notes, with reference to applicant Hodžić (CH/98/162), who has reserved his right to claim compensation for future costs, that he has not claimed any compensation within the prescribed time-limit. Accordingly, no compensation can be awarded.

122. With reference to applicant Bevc (CH/98/164) the Chamber notes that, whilst claiming certain compensation conditionally, he has not lodged any final and unambiguous claim within the prescribed time-limit. Accordingly, no compensation can be awarded in this respect. The Chamber finds it appropriate, however, to award him 15 KM in compensation for costs and expenses.

123. With reference to applicant Dakić (CH/98/176) the Chamber notes that part of his compensation claim relates to legal costs allegedly incurred in January 1995, i.e. prior to the entry into force of the Agreement. This part of the claim must therefore be rejected. As for the remainder of his claim, the Chamber finds it appropriate, taking into account the Advocates' Tariff, to award him a total of 200 KM in compensation for legal costs and expenses incurred in the proceedings before the Court in Travnik in May 1996 and before the Chamber (50 and 150 KM, respectively).

124. With reference to applicant Ivković (CH/98/182) the Chamber accepts to consider his compensation claim for the reason invoked by him. It notes, however, that in so far as he requests reimbursement of the difference between the purchase price paid in advance and the price finally determined these events took place before 14 December 1995. This part of his claim must therefore be rejected. The Chamber finds it appropriate, however, to award him 18 KM in compensation for costs and expenses.

125. With reference to applicant Krivošija (CH/98/188) the Chamber likewise rejects, for the reason stated in paragraph 124, his claim for reimbursement of the difference between the purchase price and commission paid in advance and the price finally determined. The Chamber finds it appropriate, however, to award him 18 KM in compensation for costs and expenses.

126. The Chamber finds it appropriate to award applicant Milenković (CH/98/244) 30 KM in compensation for costs and expenses.

VIII. CONCLUSIONS

127. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible;

2. unanimously, that the passing of legislation providing for the retroactive nullification of the applicants' purchase contracts violated their rights under Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in breach of its obligations under Article I to the Agreement;

3. unanimously, that the recognition and application of the legislation providing for the retroactive nullification of the applicants' contracts has violated their rights under Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

4. unanimously, that the continuing adjournment after 14 December 1995 of all court proceedings aiming at formal recognition of the applicants' property rights (whether or not actually initiated by them) has violated their right of access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

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

6. unanimously, to order the Federation to render ineffective the retroactive annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

7. unanimously, to order the Federation to take effective steps to lift the adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property rights and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time;

8. by six votes to one, to order the Federation to pay to the applicants below, within three months, the following sums in compensation for fees and expenses:

(a) to applicant Remenović (CH/98/128) 15 KM;

(b) to applicant Zoletić (CH/98/152) 15 KM;

(c) to applicant Antonić (CH/98/158) 10 KM;

(d) to applicant Bevc (CH/98/164) 15 KM;

(e) to applicant Dakić (CH/98/176) 200 KM;

(f) to applicant Ivković (CH/98/182) 18 KM;

(g) to applicant Krivošija (CH/98/188) 18 KM;

(h) to applicant Milenković (CH/98/244) 30 KM;

9. by six votes to one, to reject the remainder of the applicants' claims for compensation;

10. by six votes to one, to order that simple interest at an annual rate of four per cent will be payable over the awarded sums or any unpaid portion thereof, from the date of expiry of the above-mentioned three month period until the date of settlement; and

11. unanimously, to order the Federation to report to it by 15 April 1999 on the steps taken by it to give effect to this decision.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

A N N E X

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate partly dissenting opinion by Mr. Manfred NOWAK:

PARTLY DISSENTING OPINION OF MR. NOWAK

I voted against the conclusions set out in para. 127 (8), (9) and (10) concerning the awarding of compensation because I disagree with the way in which the Chamber applies this remedy.

Article XI (1) of Annex 6 of the Dayton Peace Agreement stipulates:

"1. Following the conclusion of the proceedings, the Chamber shall promptly issue a decision, which shall address:

a) whether the facts found indicate a breach by the Party concerned of its obligations under this Agreement; and if so

b) what steps shall be taken by the Party to remedy such breach, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures."

This provision goes beyond the comparable competence of the European Court of Human Rights, under Article 41 of the European Convention, to afford, if necessary, "just satisfaction to the injured party". While the language of Article 41 of the European Convention is derived from similar clauses which appeared in various bilateral and multilateral arbitration treaties concluded at the beginning of this century (see the judgement of the European Court in the Belgian "Vagrancy" cases of 10 March 1972, Series A No. 14), Article XI (1) of Annex 6 resembles more the concept of an emerging right of victims of human rights violations to reparation under contemporary human rights law. The draft "Basic Principles and Guidelines on the Right to Reparation for Victims of (Gross) Violations of Human Rights and International Humanitarian Law" which were prepared by Special Rapporteur Theo van Boven and are presently pending before the UN Commission on Human Rights (UN Doc. E/CN. 4/1997/104) provide, *inter alia,* that reparation shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guaranties of non-repetition.

The Chamber should, in my opinion, develop its jurisprudence under Article XI (1) of Annex 6 along the lines of the emerging right to reparation rather than by following only the case-law of the European Court. When dealing with monetary relief (which is only one among various types of reparation) the Chamber shall, of course, take into account the respective claims of the applicants. More important is, however, that the amount of compensation, together with other types of reparation, is proportionate to the gravity of the violations found and the resulting damage. Nothing in the language of Article XI (1) suggests that the Chamber is bound by the respective claims of the applicants and is, therefore, prevented from affording a type of reparation which is different from the one explicitly claimed or an amount of compensation which is higher than the one claimed by the applicants. This assumption of the Chamber's jurisprudence derives from civil litigation and might perhaps be appropriate for the limited competence of the European Court of Human Rights to afford just satisfaction. It is, in my opinion, inappropriate for the Chamber, in particular if one takes into account the particular circumstances in Bosnia and Herzegovina.

In the present decision on 32 fairly similar JNA cases, the Chamber awarded to one applicant (Mr. Dakić) compensation amounting to 200 DEM, to seven other applicants compensation ranging from 10 to 30 DEM, and to the other 24 applicants no compensation at all. This decision, which to me seems arbitrary and not proportionate to the gravity of the violations found, can only be explained by the assumption that the Chamber cannot go beyond the explicit and clearly specified claims of the applicants. For the reasons stated above, I disagree with this assumption deriving from the Strasbourg case-law. In my opinion, the Chamber should either have refrained from awarding any compensation and order instead other additional types of reparation, or it should have awarded a

more substantial amount of compensation to all applicants which should be proportionate to the gravity of the violations and the pecuniary as well as non- pecuniary damages suffered.

(signed) Manfred Nowak