DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

Cases Nos. CH/98/159, CH/98/171, CH/98/269, CH/98/273 and CH/98/299

Akif HUSELJIĆ, Goran SARAČEVIĆ, Evdokije BOGDANOVIĆ, Mlladin STOJANOVIĆ, Nikola DABOVIĆ

against

BOSNIA AND HERZEGOVINA
AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 14 April 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

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

Having considered the admissibility and merits of the aforementioned cases 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 Article 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 five cases involving Yugoslav National Army apartments. The cases were considered to be directed against the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The names of the individual applicants, the corresponding case numbers and the facts of the case are listed in part III B of the decision.

2. In 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 five 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 1996-1997, p. 53), *Podvorac and 15 other JNA cases* (Decision on the admissibility and the merits of 12 June 1998, Decisions and Reports 1998, p. 1) as well as *Grbavac and 26 Other JNA cases v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* and *Ostojić and 31 Other JNA cases v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* (Decisions on the admissibility and the merits of 15 January 1999).

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between January 1998 and February 1998 and registered between January 1998 and April 1998. The applicants in Cases Nos. CH/98/171 and CH/98/299 are represented by lawyers.

5. All but one of the applications were directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. Mr. Saračević's complaint was initially directed against the Federation of Bosnia and Herzegovina. The Chamber considered, however, that the applicant's complaint 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 this case as being directed against both the State and the Federation (see also the decision in, for instance, the *Podvorac and 15 other JNA cases*, loc. cit., paragraph 4 and the *Medan and Others* decision, loc. cit., paragraphs 28-30 and 44-47).

6. Between 6 April 1998 and 2 July 1998 the applications were transmitted pursuant to Rule 49(3)(b) of the Rules of Procedure to the respondent Parties for observations on their admissibility and merits.

7. The Federation of Bosnia and Herzegovina submitted observations between June 1998 and October 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied between July 1998 and January 1999. 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 First Panel deliberated on the admissibility and the merits of the cases on 14 April 1999. Under Rule 34 of its Rules of Procedure, it decided to join the applications and adopted the present decision on the above mentioned date.

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 Army (*Službeni List* (Official Gazette) of the Socialist Federal Republic of Yugoslavia, No. 84/90). This was a Law of the Socialist Federal Republic of Yugoslavia, which was passed in 1990 and came into force on 6 January 1991. In the following years a number of Decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina with the aim of regulating social property issues in general and social property over which the JNA had jurisdiction in particular (see the Chamber's decision in the cases of *Medan 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 (*S.L.* 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 (*S.L.* 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 suspended court proceedings until new housing legislation was adopted. This Decree entered into force on 10 February 1995, the date of its publication in *Službeni List*. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (*S.L.* of the Republic of Bosnia and Herzegovina, No. 50/95) stating that contracts for the sale of apartments and other property concluded on the basis of, *inter alia*, the Law on Securing Housing for the JNA were invalid. This Decree 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 (*S.L.* of the Republic of Bosnia and Herzegovina, 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 Occupancy Right came into force (*Službene Novine* (Official Gazette) of the Federation of BiH, No. 27/97). This law was amended by a law of 23 March 1998 (*S.N.* of the Federation of BiH, No. 11/98). Neither law affected the annulment of the present applicants' contracts. Under Article 39 an occupancy right holder who, under provisions of the 1997 law, contracts to purchase an apartment which he had contracted to purchase on the basis of, *inter alia*, the Law on Securing Housing for the JNA shall be recognised the purchase amount earlier paid.

B. The individual cases

12. The applicants are former members or 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.

1. The case of Mr. Akif (Behija) HUSELJIĆ (CH/98/159)

13. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja bosanskih vladara No.18 (formerly Oktobarske revolucije No.2) Tuzla, having paid the purchase price due (11.100,00 Dinars) on 1 February 1992.

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

2. The case of Mr. Goran SARAČEVIĆ (CH/98/171)

15. On 15 March 1992 the applicant concluded a purchase contract for a JNA apartment at Lamela No.2D/3 (formerly Trg Republike No. 2D/3) Travnik and paid the purchase price due (784.375,00 Dinars).

16. On 20 June 1995 the applicant submitted an application to the Court of First Instance Travnik 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 proceedings remain adjourned.

3. The case of Mr. Evdokije BOGDANOVIĆ (CH/98/269)

17. On 7 March 1992 the applicant concluded a purchase contract for a JNA apartment at Armije BiH No.23 (formarly Skojevska 59) Tuzla, and paid the purchase price due (142.512,00 dinars).

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

4. The case of Mr. Miladin STOJANOVIĆ (CH/98/273)

19. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Amalije Lebeničnik No. 2 Tuzla and paid the purchase price due (279.199,00 Dinars). The applicant has not initiated court proceedings to have himself registered as the owner of the apartment.

5. The case of Mr. Nikola DABOVIĆ (CH/98/299)

20. On 2 April 1992 the applicant concluded a purchase contract for a JNA apartment at Đenetića Čikma No. 8 Sarajevo and paid the purchase price due (209.615,00 Dinars).

21. The applicant has initiated court proceedings to have himself registered as the owner of the apartment. The proceedings have been adjourned.

IV. COMPLAINTS

22. 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 paragraphs 10-11 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

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

2. The Federation of Bosnia and Herzegovina

24. The Federation of Bosnia and Herzegovina primarily refers to the liability of the State of Bosnia and Herzegovina for the impugned measures. Having regard to the ongoing discussion regarding the succession of the former SFRJ, it is presently impossible for the Federation to fulfil its obligations flowing from the Chamber's decision in *Medan and Others* (loc. cit.).

25. The Federation furthermore argues that the Chamber lacks competence *ratione temporis* to deal with the cases. In some of the cases the Federation, moreover, argues that the cases have been lodged past the six months' period stipulated in Article VIII(2)(a) of the Agreement, since the essential grievance concerns the Decree of 22 December 1995 which was adopted as law in January 1996. This enactment constituted the "final decision" within the meaning of Article VIII(2)(a) of the Agreement. Consequently, the applications should have been lodged by July 1996.

26. 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 place those prevented from buying JNA apartments on an equal footing with the applicants, and to protect State property. The measures were therefore justified under the second paragraph of Article 1 of Protocol No. 1 to the

Convention.

27. The Federation argues in its observations of 28 October 1998 in the cases of Miladin Stojanović (CH/98/273) and Nikola Dabović (CH/98/299) that it has, during 1998, enacted the legislation needed for the resumption of the adjourned court proceedings, so that the applicants are enjoying all their rights as guaranteed by Article 6 of the Convention. The Federation also argues that the purchase contracts concluded between February 1992 and February 1993 are invalid *ab initio*.

B. The Applicants

28. 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 the purchasers were all former members or employee of the 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 purchasers cannot be compared with those who did not contribute to the Army Housing Fund.

VI. OPINION OF THE CHAMBER

A. Admissibility

29. 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, provides, *inter alia*, 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 and that the application has been filed with the Commission within six months from such date on which the final decision was taken.
>
> ...
>
> (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, ... ".

30. In accordance with generally accepted principles of international law, it is outside the competence of the Chamber *ratione temporis* to decide whether events occurring before the coming into force of the Agreement on 14 December 1995 gave rise to violations of human rights. Evidence relating to such events may, however, be relevant as a background to events which occurred after the Agreement entered into force. Moreover, in so far as an applicant alleges a continuing violation of his rights after 14 December 1995, the case may fall within the Chamber's competence *ratione temporis* (*see Bastijanović* v. *Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, Case No. CH/96/8, decision of 4 February 1997, Decisions 1996-97).

31. The Chamber recalls that the present cases were introduced between January and February 1998. The applicants essentially complain about the effects of the decrees of 3 February and 22 December 1995. In previous JNA cases the Chamber has found the Federation to be in violation of the Agreement because of its recognition and application of those decrees (see, e.g., the aforementioned *Medan and Others* decision, loc. cit., paragraphs 38 and 41). The present applicants must also be understood as alleging that the effects of those decrees have been ongoing up to this day. The Chamber notes that 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 new law to be adopted in the future. Indeed, legislation to that effect was enacted in December 1997 and March 1998 (see paragraph 11 above). In these circumstances the Chamber is unable to identify any "final decision" whereby the six months' period stipulated in Article VIII(2)(a) could be considered to have commenced on 18 January 1996. Given this ongoing situation, the Chamber is also competent *ratione temporis* to examine the present cases. It follows that the

Federation's objections must be rejected.

32. 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 26 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.

33. The Chamber notes that neither respondent 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 (cf., *a contrario*, e.g., *Blentić v. Republika Srpska*, Case No. CH/96/17, decision of 3 December 1997, paragraphs 19-21, Decisions 1996-97, in which the Chamber considered this admissibility criterion in light of the corresponding requirement in Article 26 of the Convention). Nor can the Chamber of its own motion find any grounds for declaring the present cases inadmissible.

34. The Chamber concludes therefore that all the applications, including those where the applicants did not institute any court proceedings, are admissible.

B. Merits

35. 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

36. 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 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."

37. 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 *Podvorac and 15 other JNA* cases (loc. cit., paragraph 32-34 and paragraphs 59-61, respectively). In the *Medan* case, the Chamber held that even those applicants who had entered into contracts after the Decree of 15 February 1992 (temporarily prohibiting the sale of the JNA apartments) were to be considered as having rights under Article 1 of Protocol No. 1 of the Convention. The answer to this question in the present cases is therefore affirmative. The effect of the Decree of December 1995 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".

38. The Federation of Bosnia and Herzegovina argues that the impugned legal acts were designed

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.

39. The applicants stress the fact that the purchasers were all former employees of the 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 purchasers cannot be compared with those who had not contributed to the Army Housing Fund.

40. The Chamber finds that there is no material distinction between the present cases and those of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.). Moreover, the new legislation issued after the Chamber's decision in *Medan and Others* (see paragraph 10 above) did not change the present applicants' situation. The Chamber notes, however, that the legislation posterior to the Decree of December 1995 and the related law of January 1996 (see paragraphs 10-11 above), as in force at present, cannot revalidate the applicants' original purchase contracts retroactively, that is to say with effect from the dates when those contracts were concluded. Accordingly, this legislation can have no bearing on the outcome of the present cases.

41. 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

42. 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…"

43. As in the cases of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.) the Chamber notes that the court proceedings in question either were or would have been adjourned shortly after the Decree in question entered into force. The Chamber observes that according to the observations of the Federation in the case of Miladin Stojanović, CH/98/273, and the case of Nikola Dabović, CH/98/299, the Federation enacted the legislation needed to lift the adjournment during 1998. Accordingly, there was an interference from 14 December 1995 until sometime in 1998 with the applicants' effective 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 *Podvorac and 15 other JNA cases*, paragraphs 40 and 64, respectively and the 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 the Protocol 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 continued or would have continued since 14 December 1995, when the Agreement came into force at least until 1998. The Chamber would add that any proceedings initiated would have lasted beyond a "reasonable time" due to the February 1995 Decree, which as stated earlier, apparently remained effective until some time in 1998.

3. Article 13 of the Convention

44. 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."

45. 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

46. 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.

47. 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 *Podvorac and 15 other JNA* cases (loc. cit.) except as regards the possible end of the adjournment of proceedings. It is therefore appropriate to make orders similar to those issued in those cases.

48. The breaches of Article 1 of Protocol No. 1 which the Chamber has found arose from the legislation already referred to. The State is responsible for having passed that legislation, but the matters which it deals with are now within the responsibility of the Federation, which recognises and applies 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.

49. The Chamber will also order the Federation to take any necessary steps to lift the compulsory adjournment of the court proceedings instituted by the applicants Goran Saračević, CH/98/171, and Nikola Dabović, CH/98/299, which the Chamber has found to be in violation of Article 6 of the Convention, and to take any necessary steps to secure the applicants' right of access to court.

50. 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:

51. Ms. Behija Huseljić (CH/98/159) claims compensation for the paid purchase price (11,100.00 dinars) conditionally, that is to say only if the contract remains annulled.

52. Mr. Goran Saračević (CH/98/171) claims compensation for lawyer's fees of 450 DEM for submission of the application to the domestic court, 450 DEM for representing the applicant before the domestic court, 450 DEM for the submission of the application to the Chamber and 450 DEM for the submission of observations to the Chamber, totalling 1,800 DEM in lawyer's fees.

53. Mr. Evdokije Bogdanović (CH/98/269) claims compensation conditionally, that is to say only if the purchase contract remains annulled, in the amount paid in excess of the purchase price of the apartment (26,488.00 dinars), compensation for his contribution of 746,040.00 dinars to the Housing Fund of the JNA which was reduced from the original contract price, 10,000 DEM for offensive remarks made by the military lawyer to the applicant, 30,000 DEM for pain suffered and maltreatment as an employee of the former JNA, 10 DEM for the lawyer's fee and 5 DEM for costs of posting documents to the Chamber.

54. In the case of Ms. Behija Huseljić (CH/98/159) the Chamber rejects her claim for the purchase price paid as the Chamber is affirming her property rights according to the contract.

55. The Chamber 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 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 therefor. 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, paragraph 23).

56. With reference to applicant Saračević (CH/98/171) the Chamber notes that part of the compensation claim relates to loss of property allegedly suffered 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 the claim, the Chamber finds it appropriate, taking into account the Advocates' Tariff, the Chamber finds it appropriate to award Mr. Goran Saračević 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; see *Ostojić and 31 Other JNA Cases,* loc. cit., paragraph 123).

57. The Chamber finds it appropriate to award Mr. Evdokije Bogdanović (CH/98/269) 15 KM for legal fees and postage. The Chamber rejects as outside its competence *ratione temporis* the request for a rebate for the amount paid above the contract price as well as contributions made to the housing fund for the JNA . The Chamber rejects the claim of 10,000 DEM for offensive remarks made by the military lawyer to the applicant as not being related to the violation of human rights which it has found. Finally, the Chamber rejects the request for 30,000 DEM for pain and maltreatment suffered as the applicant cannot be said to have suffered any such damage as a result of his inability to be registered as the owner of the apartment.

VIII. CONCLUSIONS

58. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible;

2. by 5 votes to 1, 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. by 5 votes to 1, 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. by 5 votes to 1, that the adjournment since 14 December 1995 of 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. by 5 votes to 1, to order the Federation to take all necessary steps to render ineffective the 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 any necessary steps to lift the compulsory adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property right and to take any necessary steps to secure in this matter their right of

access to court and to a hearing within a reasonable time;

8. unanimously, to reject Ms. Behija Huseljić's claim for compensation;

9. (a) unanimously, to order the Federation to pay applicant Mr. Goran Saračević (CH/98/171) within three months, the sum of 200 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

10. (a) unanimously, to order the Federation to pay applicant Mr. Evdokije Bogdanović (CH/98/269) within three months, the sum of 15 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

11. unanimously, 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

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

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate concurring opinion by Mr. Dietrich RAUSCHNING.

SEPARATE CONCURRING OPINION BY MR. DIETRICH RAUSCHNING

While I agree with the conclusions of the decision, I would like to elaborate on more compelling reasons for reaching these conclusions.

I. The applicants' rights under the purchasing contracts as assets protected under Article 1 of the First Protocol to the Convention

1. The Agent of the respondent Party argues that the first sentence of the first paragraph of Article 1 protects only possessions and not property. The opinion that only possessions in the sense of the Roman Law and in the understanding of the Civil Code of this country are protected does not conform with the jurisprudence of the European Court of Human Rights and the international understanding of this clause. The word "possessions" is understood in a broader sense and has the meaning of assets. The corresponding word in the other official language, French, is "*biens*". This notion comprises property in the sense of the national civil law, but includes a variety of other acquired rights.

2. The rights derived from a contract to buy real property, which is fullfilled by the purchaser with the payment of the price due are an asset protected under Article 1 of the First Protocol. The corresponding jurisdiction of the European Court of Human Rights is cited in the Chamber's decision in the Medan case, in the subsequent decisions and in the decision in this case.

II. Invalidity of the Decree of the Socialist Republic of Bosnia and Herzegovina, as of 15 February 1992

3. The Agent of the respondent Party argues that the contracts were null and void from the beginning because they were forbidden by valid law. Under paragraph 37 and with the reference to paragraphs 32-34 of its decision in the Medan case the Chamber deals with the question of the effect of the Decree of the Government of the Socialist Republic of Bosnia and Herzegovina on a Temporary Prohibition of Sales of Socially Owned Apartments, signed on 15 February 1992 (the Decree). The Chamber states in the decision of the Medan case that the validity of that Decree is open to question. I am convinced that the Decree was invalid from the outset. Consequently it can not have the effect of invalidating contractual rights of the applicants or of hindering the acquisition of the rights.

4. Article 1 of the Decree temporarily prohibits the sales of socially owned apartments assigned to the JNA. These sales were regulated and authorised by the Law on Securing Housing for the JNA (JNA Housing Law) which was enacted by the Parliament of the Socialist Federal Republic of Yugoslavia on 29 December 1990 (SL SFRJ 1990, 2347). There are no doubts concerning the validity of that law in the period prior to Bosnia and Herzegovina becoming independent as the Federal Republic had competence to enact the law under Article 281 paragraph 6 of the Federal Constitution. Consequently, the Decree was in conflict with the JNA Housing Law as a federal law.

5. The conflict between the Decree and the federal law has to be resolved applying the law that was in force at the time the Decree was enacted. In this respect Article 207 paragraph 2 of the Constitution of the SFRJ is decisive. It states that normative acts of a Republic shall not contradict federal law. The Constitution provided that conflicts of this kind were to be settled by the Constitutional Court. If the federal organs were competent to apply and to administer the relevant law in question, then the federal law was to be applied temporarily pending a decision of the Constitutional Court.

6. At present, the Constitutional Court of the former Federal Socialist Republic of Yugoslavia which had the jurisdiction to resolve the conflict does not exist. No court or institution currently has

exclusive jurisdiction to decide on the conflict between the Decree of February 1992 and the JNA Housing Law of 1990, at that time a federal law. In particular, the Constitutional Court of Bosnia and Herzegovina, established under the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement), is not called upon to decide this conflict, because this conflict does not arise under the new Constitution.

7. In order to decide on the applications, the Chamber has to ascertain whether the applicants acquired rights by concluding the contracts and paying the price for their apartments. For this purpose, the Chamber has to apply the national law in force at that time, and it is competent to do so. Thus, the Chamber has to resolve the conflict between the Decree and the federal JNA Housing Law of December 1990 by applying Article 207 paragraph 6 of the Constitution of the SFRJ by applying the rule on conflict of laws. As a result, the Decree of 15 February 1992 was inapplicable *ab initio.* It follows that the rights derived from the contracts are assets protected by Article 1 of the First Protocol. The denial of this position of the applicants and the nullification of the contract violate the protected rights, if they can not be legitimised according to the second sentence of Article 1.

III. Legitimacy of the aim of the provisions enacted 1995/1996

8. The respondent Party has argued that the JNA members were privileged compared with other occupiers of socially owned apartments, and that the purpose of the Decree of 22 December 1995 and the endorsing law of 18 January 1996 was to rectify this violation of the principle of equality of treatment. The Chamber refers in paragraph 41 to its arguments in the Medan case, finding no difference.

9. The principle of equality of treatment has not been violated by the enactment of the JNA Housing Law 1990 which provides for the sale of an apartment to the holder of the occupancy right. This measure can be regarded as a means of privatisation, and considering that the apartments were encumbered with an occupancy right, the price provided in the law was not unreasonable. I admit that not all holders of occupancy rights in socially owned apartments in former Yugoslavia were given the opportunity to buy their apartments. However, in my opinion, the former SFRJ did not violate the principle of equality of treatment by offering to sell socially owned apartments assigned to federal institutions, whereas housing funds affiliated to the Republics, the communities and to the commercial enterprises were not privatised by the legislatures competent to enact corresponding laws. The principle of equality of treatment only demands that equal or comparable cases are regulated in the same way by the same authority. The fact that other competent legislative authorities in former SFRJ did not enact similar laws entitling all holders of occupancy rights in socially owned apartments not assigned to the JNA to buy their apartment in 1990-1992 does not violate the principle of equality of treatment.

10. If there is no violation of the principle of equality of treatment, the aim of the legislative measures 1995/1996 cannot be to rectify that violation. In my opinion, the reasons for the measures submitted by the respondent Party are ill-founded and they are manifestly unreasonable. Consequently, the Decree of December 1995 and the endorsing law of January 1996 cannot be regarded as fulfilling a legitimate aim. They aim at depriving the applicants of their possessions without being legitimised by the public interest. Their enactment and their application violate the human rights of the applicants as protected by Article 1 of the First Protocol to the ECHR.

(Signed) Dietrich RAUSCHNING