DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

Cases Nos. CH/98/124, CH/98/130, CH/98/142, CH/98/148, CH/98/160, CH/98/172, CH/98/178

Ivan LAUS, Mehmed BRADARIĆ, Safet KARABEGOVIĆ, Pero OPARNICA, Radomir STOŠIĆ, Milenko ADŽAIP, Branko GALUŠIĆ

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 14 April 1999 with the following members present:

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

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 7 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 and the corresponding case numbers 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 that entered into force in December 1995. The applicants indicate 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 raise alleged violations of Articles 6 and 13 of the Convention.

3. These cases resemble the cases of *Medan and Others v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina* (see Cases Nos. CH/96/3, 8 and 9, decision on the merits of 7 November 1997, Decisions 1996-1997), *Podvorac and 15 other JNA cases* (decision on the admissibility and the merits of 12 June 1998, Decisions and Reports 1998), and many other JNA cases which the Chamber has decided.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced and registered in January 1998. The applicant Milenko Adžaip (CH/98/172) is represented by a lawyer. The others act on their own behalf.

5. Most applications were directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, whereas one complaint (CH/98/142) was initially directed only against 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, e.g. the *Medan and Others* decision, loc. cit., paragraphs 28-30 and 44-47, and the decision in the *Podvorac and 15 other JNA cases*, loc. cit., paragraph 3).

6. On 7 April 1998 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 on 8 June 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied in June and July 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. Applicants in Cases Nos. CH/98/130, CH/98/142, CH/98/148, CH/98/160, CH/98/172, and CH/98/178 submitted claims for compensation.

8. The Second 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 last-mentioned date.

III. ESTABLISHMENT OF 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 occupancy right in respect of his 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 apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette *"Službeni List"* (henceforth "OG") 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 were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, and the Presidency of the Republic of Bosnia and Herzegovina (henceforth "RBiH"), later confirmed as laws by the Parliament of the RBiH, 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 *Medan and Others*, loc. cit., paragraphs 9-13).

11. 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 (OG 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 (OG of the RBiH, 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.

12. On 22 December 1995 the Presidency of the RBiH issued a Decree with force of law (OG of the RBiH, 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 retroactively invalid. This Decree entered into force on the same day. It was adopted as a law by the Assembly of the RBiH on 18 January 1996 and promulgated on 25 January 1996 (OG of the RBiH, No. 2/96).

13. 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 (Official Gazette *"Službeni Novine"* of the Federation of Bosnia and Herzegovina (henceforth "OG of the FBiH"), No. 27/97; "the 1997 Law"). This law was amended by a law of 23 March 1998 (OG of the FBiH No. 11/98). Neither law affected the annulment of the present applicants' contracts.

B. The individual cases

14. All 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. The facts will be summarised below. All applicants had fully paid the purchase prices due. It should be noted that the amount paid by each applicant at or around the moment 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 contribution to the JNA Housing Fund. For instance, in Case No. CH/98/160 the applicant was required to pay only 1,000 dinars on top of such contribution.

15. Further, it should be noted that in Case No. CH/98/172 the applicant instituted court proceedings before the Court of First Instance in Travnik seeking to establish that he was entitled to recognition as owner of the apartment. These proceedings were adjourned. It appears from the files that the other six applicants did not attempt to initiate court proceedings. Several applicants stated that their reason for this was the compulsory adjournment of civil proceedings under the Decree of 3 February 1995 (OG of the RBiH, No. 5/95).

16. The facts of these cases may be summarised as follows:

1. The case of Mr. Ivan LAUS (CH/98/124)

17. On 7 March 1992 the applicant concluded a purchase contract for a JNA apartment at Armie BiH 17 (formerly Skojevska 53) in Tuzla and paid the purchase price due (348,734 Dinars) on 11 February and 9 March 1992.

2. The case of Mr. Mehmed BRADARIĆ (CH/98/130)

18. On 20 March 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja Bosanskih Vladara No. 18/31 (formerly Oktobarske Revolucije 2) in Tuzla and paid the purchase price due (92,000 Dinars) on 30 January and 7 February 1992.

3. The case of Mr. Safet KARABEGOVIĆ (CH/98/142)

19. On January 1992 the applicant concluded a purchase contract (No. 3513-9955-4) for a JNA apartment at Oktobarske Revolucije Street 29, now Aleja Bosanskih Vladara 27, in Tuzla, and paid the purchase price due (200,000 Dinars) on 13 February 1992.

4. The case of Mr. Pero OPARNICA (CH/98/148)

20. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Oktobarske Revolucije 6, now Aleja Bosanskih Vladara 22, Tuzla, and paid the purchase price due (51,000 Dinars) on 12 February 1992.

5. The case of Mr. Radomir STOŠIĆ (CH/98/160)

21. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Radojke Lakić Street 3, in Tuzla, and paid the purchase price due (1,000 Dinars) on 15 February 1992.

6. The case of Mr. Milenko ADŽAIP (CH/98/172)

22. On 11 March 1992 the applicant concluded a purchase contract for a JNA apartment at Centar 2D Iamela IV (formerly Trg Republike 2/04), in Travnik, and paid the purchase price due (281,234 Dinars) on 10 February 1992.

23. On 22 August 1995 the applicant submitted a request to the Court of First Instance in Travnik, seeking to establish he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 31 May 1996 the court issued a decision adjourning the applicant's case under the Decree of 3 February 1995 (OG of the RBiH, No. 5/95). The proceedings have remained adjourned since.

7. The case of Mr. Branko GALUŠIĆ (CH/98/178)

24. On 12 February 1992 the applicant concluded a purchase contract for a JNA apartment at Aleja Bosanskih Vladara 22 (formerly Oktobarske Revolucije 6/8) in Tuzla, and paid the purchase price due (139,615 Dinars) on 12 February 1992.

IV. COMPLAINTS

25. The applicants essentially complain that the retroactive annulment of their purchase contracts, and in Case No. CH/98/172 that the compulsory adjournment of 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 No. 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The Respondent Parties

1. Bosnia and Herzegovina

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

2. The Federation of Bosnia and Herzegovina

27. The Federation of Bosnia and Herzegovina primarily refers to the liability of the State of Bosnia and Herzegovina for the impugned measures. It reasons that "the matter concerns the State's competence as it is a question regulated by Article 5 of the Constitution of Bosnia and Herzegovina". Regarding the succession of the former SFRJ, the Federation maintains that it is legally impossible for the Federation to fulfil its obligations flowing from the Chamber's decision in *Bulatović v. Bosnia and*

Herzegovina and The Federation of Bosnia and Herzegovina (Case No. CH/96/22, decision on the merits of 7 November 1997, Decisions and 1996-97).

28. 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 Federation submits that "the impugned legal acts were designed to put all citizens on an equal footing and to protect State property", the measures therefore having been justified under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

B. The Applicants

29. 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

30. 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 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, ... "

31. 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 as 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 on the admissibility of 4 February 1997, Decisions 1996-1997, page 36).

32. The Chamber recalls that the present cases were introduced in January 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. 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 the annulled contracts would be resolved by a law to be enacted in the future. Indeed, legislation to that effect was enacted in December 1997 and March 1998 (see paragraph 11 above). However, neither of the laws enacted affected the annulment of the present applicants' contracts. In these circumstances, the Chamber observes, *ex officio*, that it is unable to identify any "final decision" whereby the six months' period stipulated in Article VIII(2)(a) could be considered to have commenced. Given this ongoing situation, the Chamber is also competent *ratione temporis* to examine the present cases.

33. 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.

34. Similarly, the Chamber cannot accept the Federation's assertion that it cannot give effect to the decisions of the Chamber due to lack of competence in the subject matter. As the Chamber found in previous cases (c.f. the aforementioned *Medan and Others* decision, loc. cit., paragraphs 28-30, and the *Bulatović* decision, loc. cit., paragraphs 30—32), the Parties to the Agreement are under a direct obligation to secure to all persons within their jurisdiction the human rights and fundamental freedoms referred to in the Agreement. The applicants' complaints concern the application within the territory of the Federation, as part of the law of the Federation, of laws concerning his housing and property rights. The Chamber notes that housing and property matters are not amongst the matters listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace) as being within the responsibility of the institutions of Bosnia and Herzegovina. As these matters are "not expressly assigned" in the Constitution to the institutions of the State, they fall within the responsibility of the Entities by virtue of Article III paragraph 3(a) of the Constitution. The Federation is therefore responsible for both the content and the application of legislation in force in its territory concerning the subject matter of the applicants' complaints. This is so, in the Chamber's opinion, even if the legislation was not passed by the Parliament of the Federation.

35. In the case of *Blentić v. Republika Srpska* (Case No. CH/96/17, decision of 3 December 1997, Decisions 1996-97, 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 35 (formerly 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.

36. 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. 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).

37. The experience of the applicant who instituted court proceedings, considered together with attempts made by previous applicants before the Chamber, 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.

38. 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.

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

B. Merits

40. 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 retroactive 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

41. 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 confirmed as a law on 18 January 1996 and later promulgated on 25 January 1996 (*Službeni List* of the Republic of Bosnia and Herzegovina, No. 2/96). 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."

42. 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 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".

43. The Federation of Bosnia and Herzegovina submits that the impugned 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 the second paragraph of Article 1 of Protocol No. 1 to the Convention and justify the measures concerned in the present cases.

44. The applicants stress the fact that the purchasers were all employees of the former JNA and had contributed to the Army Housing Fund. The apartments in question 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.

45. The Chamber finds that there is no material distinction between the present cases and those of *Medan and Others* and the *Podvorac and 15 other JNA* cases (loc. cit.), *Grbavac and 26 other JNA cases* (Case No. CH/97/81 et al., decision on the admissibility and merits of 15 January 1999) and *Ostojic and 31 other JNA cases* (Case No. CH/97/82 et al., decision on the admissibility and merits of 15 January 1999). 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 (see also the aforementioned *Grbavac* and *26 other JNA cases* and *Ostojić* and *31 other JNA cases)*. 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

46. Applicant Adžaip (CH/98/172) complains that the civil proceedings instituted with a view to obtaining recognition of her ownership and registration in the Land Registry have been compulsorily adjourned by virtue of the February 1995 Decree. There is an apparent breach of Article 6 of the Convention 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…"

47. As in the cases of *Medan and Others* and the *Podvorac and 15 other JNA cases* (loc.cit.) above the Chamber notes that the court proceedings in question either were or would have been adjourned after the Decree in question entered into force. Neither respondent Party has argued that this situation has changed with respect to the present applicants. 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 e.g., the Chamber's decision in the cases of *Medan and Others*, loc.cit., paragraph 40, 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 and 36). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of Protocol 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 or her case has or would have continued since 14 December 1995, when the Agreement came into force. Moreover, any proceedings initiated would by now have lasted beyond a "reasonable time" due to the February 1995 Decree.

3. Article 13 of the Convention

48. 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."

49. 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,* judgement of 22 September 1994, Series A No. 296, paragraph 65).

VII. REMEDIES

50. 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.

51. 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 other JNA cases mentioned above. It is therefore appropriate to make orders similar to those issued in those cases.

52. 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. It will therefore make an order against the Federation to that effect.

53. The Chamber will also order the Federation to take all necessary steps to lift the compulsory adjournment of the court proceeding instituted by the applicant in Case No. CH/98/172 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.

54. 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:

55. Mr. Bradarić (CH/98/130) claims compensation of a total of 1,000 DEM for his lawyer's fees, for costs of telephone conversations and for copying and posting documents to the Chamber,

for coming to Sarajevo and for lost time. He further requests 50,000 DEM for "the insults, for calling me a robber in the press and for presenting me and the way in which we bought the apartment falsely to the BiH people", all referring to remarks made by the military lawyer Ms. Nura Pinjo in her observations on behalf of the Federation in this case, in other cases and in the press.

56. Mr. Karabegović (CH/98/142) claims compensation, conditionally (in case his ownership would not be recognized) for payment of contributions to the Housing Fund; and 657 DEM per floor surface m2 of his flat. Further, he asks for reimbursement of "the additionally paid amount according to the receipts"; of 10 DM in lawyer's fees, and of 5 DEM for sending documents to the Chamber. He also requests 10,000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation in this case, in other cases and in the press, and 30,000 DEM for all traumas, intimidation and ill-treatment he suffered as well as for the current threats and annoyances he is subjected to by the organs of the Federation.

57. Mr. Oparnica (CH/98/148) and Mr. Stošić (CH/98/160) submit an identical compensation claim, requesting compensation, conditionally (in case their ownership would not be recognized) for payment of contributions to the Housing Fund; and 857 DEM per floor surface m2 of their flats. Further, they ask for reimbursement of "the additionally paid amount according to the receipts"; of 10 DM in lawyer's fees, and of 5 DEM for sending documents to the Chamber. They also request 10,000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation in this case, in other cases and in the press, and 30,000 DEM for all traumas, intimidation and ill-treatment they suffered as well as for the current threats and annoyances they are subjected to by the organs of the Federation.

58. Mr. Adžaip (CH/98/172) claims compensation of legal costs amounting to 450 DEM for the submission of the request to the Court of First Instance in Travnik on 22 August 1995, 450 DEM for his legal representation at the hearing before the Court in Travnik on 31 May 1996, 450 DEM for the application to the Chamber and 450 DEM for the response to the allegations of the respondent Party.

59. Mr. Galušić (CH/98/178) claims compensation for an unspecified amount paid to the Housing Fund in excess of the value of the apartment. Further, he asks for reimbursement of 10 DEM in lawyer's fees, and of 8 DEM for sending documents to the Chamber. He also requests 10,000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation in this case, in other cases and in the press, and 30,000 DEM for all traumas, intimidation and ill-treatment he suffered as well as for the current threats and annoyances he is subjected to by the organs of the Federation.

60. The respondent Parties have not commented on any of the above claims.

61. 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 or costs incurred before that date, or relating to events before that date. Compensation may be awarded in respect of pecuniary or non-pecuniary (moral) damage as well as for costs and expenses incurred by the applicants after that date in order to prevent the breach found or to obtain redress therefor. Any costs and expenses claimed should be specified (see, e.g., *Damjanović v. The Federation of Bosnia and Herzegovina,* Case No. CH/96/30, decision of 11 March 1998, Decisions and Reports 1998, page 80, paragraph 23).

62. The Chamber further recalls that it has already rejected a compensation claim lodged by an applicant merely on the ground that he had been 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 (see *Bulatović v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, Case No. CH/96/22, decision on the claim for compensation of 15 July 1998, Decisions and Reports 1998, paragraph 15).

63. Some applicants claim compensation for their contributions to the Housing Fund and based on the surface of the flats. These claims appear to have been made to cover the eventuality that the applicants' ownership is not recognized. In light of the Chamber's above findings on the merits these claims must be rejected.

64. As for the claims of applicants Bradarić, Karabegović, Oparnica, Stošić and Galušić for compensation in the amount of 10,000 DEM for being referred to, in a defamatory manner, as "robbers" in submissions made on behalf of the Federation in this case, in other cases and in the press, and of 30,000 DEM for other non-pecuniary damage ("traumas", "maltreatment" and "intimidation") allegedly suffered on account of disrespect shown by the Federation, the Chamber notes that these claims - made without any clear and concrete evidence substantiating them - are not connected with the violations alleged in the applications and subsequently established by the Chamber. Hence, these claims fall outside the scope of the case before the Chamber. The same reasoning applies to the claims of applicants Karabegović, Oparnica and Stošić concerning their compensation claims for current threats and annoyances.

65. Further, the Chamber considers that the present decision finding violations of the applicants' rights under the Convention constitute adequate satisfaction for them (see the aforementioned *Bulatović* decision, loc. cit., paragraph 18).

66. The Chamber finds it appropriate to award Mr. Bradarić (CH/98/130) 15 KM for legal fees and postage. The applicant has not substantiated further expenses incurred, namely he has not provided any evidence for having been represented by an advocate.

67. The Chamber finds it appropriate to award Mr. Karabegović (CH/98/142) 15 KM for legal fees and postage.

68. The Chamber finds it appropriate to award applicant Mr. Oparnica (CH/98/148) 15 KM for legal fees and postage.

69. The Chamber finds it appropriate to award applicant Mr. Stošić (CH/98/160) 15 KM for legal fees and postage.

70. Regarding the applicant Mr. Adžaip (CH/98/172) the Chamber notes that part of his compensation claim relates to legal costs allegedly incurred in August 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 (see *Ostojić and 31 Other JNA Cases*, loc. cit., paragraph 123).

71. The Chamber finds it appropriate to award applicant Mr. Galušić (CH/98/178) 18 KM for legal fees and postage. It rejects as outside its competence *ratione temporis* the request for compensation regarding the amount of contributions he paid to the Housing Fund above the contract price of his apartment.

VIII. CONCLUSIONS

72. 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 purchase contracts in question violated the applicants' 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 purchase contracts in question has violated the applicants' 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 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 annulment of the purchase contracts in question 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 right 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 6 votes to 1, to order the Federation to pay to the applicants below, within three months, the following sums in compensation for fees and expenses:

(a) to Mr. Bradarić (CH/98/130) 15 KM;

(b) to Mr. Karabegović (CH/98/142) 15 KM;

(c) to Mr. Oparnica (CH/98/148) 15 KM;

(d) to Mr. Stošić (CH/98/160) 15 KM;

(e) to Mr. Adžaip (CH/98/172) 200 KM; and

(f) to Mr. Galušić (CH/98/178) 18 KM;

9. by 6 votes to 1, to reject the remainder of the applicants' claims for compensation;

10. by 6 votes to 1, 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 11 September 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