



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 October 1999)

Case no. CH/98/777

Emadin PLETILIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 September 1999 with the following members present:

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

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned 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;

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

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He is owner of real property in Gradiška, Republika Srpska which he was forced to leave during the war. The property is currently occupied by two families of refugees and displaced persons of Serb origin. The applicant has returned to Gradiška together with his wife on an unspecified date.
2. The case concerns his attempts before various authorities of the Republika Srpska to regain possession of his property. The applicant has taken the following steps to this end: applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property ("the Commission") in Gradiška and the Ministry for Refugees and Displaced Persons ("the Ministry") under the Law on the Use of Abandoned Property which entered into force in February 1996 ("the old Law", see paragraphs 27-35 below); initiating proceedings before the Municipal Court in Gradiška ("the Court"), and applying to the Ministry under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property which entered into force in December 1998 ("the new Law", see paragraphs 36-50 below).
3. The case raises issues principally under Articles 6 and 8 of the European Convention on Human Rights, Article 1 of Protocol No. 1 to the Convention and Article II(2)(b) of the Agreement.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 16 July 1998 and registered on the same day.
5. On 10 September 1998 the First Panel of the Chamber considered the case and decided to ask the applicant for further information in relation to the admissibility and merits of his application. The information was received on 5 October 1998.
6. On 18 December 1998 the First Panel of the Chamber decided to transmit the case to the respondent Party pursuant to Rule 49(3)(b) for its observations on their admissibility and merits. On 23 December 1998 the application was so transmitted. The respondent Party's observations were due by 23 February 1999. No observations have been received.
7. On 19 March 1999 the applicant's request for compensation and other relief was received. On 23 March 1999 the request received by the Chamber was sent to the respondent Party for its further observations. No observations were received.
8. On 19 April 1999 the applicant submitted additional information which was transmitted to the respondent Party on 22 April 1999.
9. The First Panel deliberated on the admissibility and merits of the application on 9 September 1999 and adopted the present decision.

III. FACTS

A. Facts of the case

10. The applicant is the owner of land in Gradiška registered under parcel number 1227/8 as evidenced by the extract number 1093/3 from the Land Registry. A house is situated on the land. In 1993, the applicant and his wife left Gradiška after having arranged with one of the families now living in the house to look after it. They returned to Gradiška after the war ended. The applicant's property is occupied by Bosnian Serb displaced persons and refugees of Serb origin from Croatia. The applicant has obtained an identity card ("*Lična karta*") issued by the authorities of the Republika Srpska and it constitutes proof of permanent residence in that Entity.
11. On 2 April 1998 and 23 April 1998 the applicant applied to the Commission to regain

possession of his property. He did not receive any reply. On 23 June 1998 he appealed to the Ministry, but did not receive any decision.

12. On 13 July 1999 the applicant initiated proceedings against the current occupants of the property before the Court in Gradiška ("the court"), seeking their eviction. In December 1998, the court rejected the proceedings on the ground that it was incompetent to deal with the matter.

13. In January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 5 January 1999 it issued a decision entitling him to re-enter the property. The date set for such re-entry was 6 April 1999. On 5 April 1999 the applicant filed a request to the Commission for forcible execution of the decision of 5 January 1999. The applicant did not succeed in regaining possession of his property.

B. Relevant legal provisions

1. Constitution of Bosnia and Herzegovina

14. Article II of the Constitution of Bosnia and Herzegovina ("the BH Constitution"), entitled "Human Rights and Fundamental Freedoms", sets out the mechanism for the protection of human rights and fundamental freedoms within Bosnia and Herzegovina.

15. Article II(1) of the BH Constitution, entitled "Human Rights", reads as follows:

"Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms."

16. Article II(2) of the BH Constitution, entitled "International Standards", reads as follows:

"The rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

17. Article II(4) of the BH Constitution, entitled "Non-Discrimination", reads as follows:

"The enjoyment of the rights and freedoms (guaranteed by the BH Constitution) shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

18. Article II(5) of the BH Constitution, entitled "Refugees and Displaced Persons", reads as follows:

"All refugees and displaced persons have the right freely to return to their homes of origin."

19. Article II(6) of the BH Constitution, entitled "Implementation", reads as follows:

"Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above."

2. Constitution of the Republika Srpska

20. Title II of the Constitution of the Republika Srpska ("the RS Constitution") is titled "Human Rights and Freedoms".

21. Article 10 of the RS Constitution reads as follows:

"Citizens of the Republic are equal in the enjoyment of rights, freedoms and duties, they are

equal before the law and shall enjoy legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status or other personal attributes.”

22. Article 16 of the RS Constitution reads as follows:

“Everyone has the right to equal protection of their rights before the courts and other state organs and organisations.

Everyone has the right to appeal or otherwise institute legal proceedings against a decision concerning his rights or legal interests.”

23. Article 17 of the RS Constitution reads as follows:

“Everyone has the right of redress for loss caused by illegal or unjust actions by official persons or state organs or institutions acting in an official capacity.”

24. Article 56 of the RS Constitution reads as follows:

“In accordance with the law, rights of ownership may be limited or expropriated, subject to payment of fair compensation.”

25. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

“During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law.”

26. Article 121 of the RS Constitution reads as follows:

“The judicial function is performed by the Courts. The Courts are independent and decide upon the basis of the Constitution and laws.

The Courts protect human rights and freedoms, established rights and interests of legal entities and legality.”

3. The Law on the Use of Abandoned Property

27. The Law on the Use of Abandoned Property (Official Gazette of Republika Srpska – hereinafter “OG RS” – no. 3/96; “the old Law”) was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the old Law, insofar as they are relevant to the present cases, are summarised below.

28. Articles 2 and 11 define “abandoned property” as real and personal property which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

29. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

30. Article 15 reads as follows:

“Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:

- to the families of killed soldiers
- war invalids with injuries in categories I-V
- war invalids with injuries in categories V-X
- qualified workers of whom there is a lack in the Republika Srpska.”

31. Article 15A (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

32. Articles 39-42 set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

33. Article 39 reads as follows:

“The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia.”

34. Article 40 reads as follows:

“In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.

If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:

- within 30 days from the day the person who was the occupier of the property returns to his property or apartment
- at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation. (...)”

35. Article 42 reads as follows:

“The provisions of Articles 39-41 of this law shall be applied on the basis of reciprocity.”

4. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

36. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; “the new Law”) establishes a detailed framework for persons to regain possession of property considered to be abandoned.

37. The new Law puts the old Law out of force.

38. Article 2 states that all decisions made under the old Law granting temporary or permanent

rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new Law.

39. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991 or the date of its becoming abandoned. Article 4 states that the terms “owner”, “possessor” or “user” shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned.

40. Article 6 concerns the arrangements to be made for persons who are required to vacate property in order to allow the previous owner, possessor or user to return. If such a person cannot, or does not wish to, return to his or her prewar home, and has not been provided with alternative temporary accommodation, the relevant body of the Ministry (i.e. the local Commission) shall provide that person with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

41. If a person who temporarily occupies a property is to be evicted from it, and provides evidence that he or she applied to regain possession of his or her pre-war home, that person cannot be evicted until he or she can regain possession or freely dispose of his or her own home. An exception to this prohibition on eviction exists where the temporary occupant is provided with alternative accommodation within a period of one year of providing evidence of an application to regain possession of his or her own pre-war home.

42. If the person who is required to vacate the property has had his or her request to return to his or her property resolved, any failure of the responsible authority to provide alternative accommodation for such a person cannot delay the return of the owner, possessor or user of such property.

43. If a temporary occupier of abandoned property occupies that property without a legal basis, the Ministry is not obliged to provide him or her with alternative accommodation.

44. Article 7 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Article 8 states that such claims may be filed with the responsible body of the Ministry (i.e. the local Commission). This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

45. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

46. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Procedures (see paragraphs 51-56 below) and treated as an expedited procedure.

47. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

48. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Commission for Real Property Claims of Refugees and Displaced Persons (“the Annex 7 Commission”). If this occurs, all other proceedings regarding the property, including those under Article 11, shall be stayed pending the final decision of the Annex 7 Commission. Any decision of the Annex 7 Commission shall be enforced by the appropriate authorities of the Republika Srpska.

49. Article 27 states that a decision made under Article 11 may be appealed to the Ministry within 15 days of receipt of such decision.

50. Article 29 of the law requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS 1/99 and entered into force on 21 January 1999. Article 6 of this instruction states that a person who has submitted a claim under the previously applicable regulations (i.e. under the old Law) and such claim has not yet been properly resolved should submit a new claim under the new Law. However, if they do not do so, such previous claim shall constitute a valid claim under the new Law. If such previously submitted claim does not meet the requirements of the new Law, the applicant is to be requested to submit the additional information as prescribed by the new Law.

5. The Law on General Administrative Procedures

51. The Law on General Administrative Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

52. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on General Administrative Procedures.

53. Chapter XVII (Articles 270 – 288) is concerned with the procedure for enforcement of rulings and conclusions.

54. Article 270 states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of any appeal expires without any such appeal having been submitted.

55. Article 274 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

56. Article 275 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. of reinstatement to property) is to be carried out by an administrative procedure.

6. The Law on Administrative Disputes

57. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS no. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25(1), if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued within 7 days of the lodging of such a reminder, the applicant may initiate an administrative dispute.

7. The Law on Regular Courts

58. The Law on Regular Courts (OG RS nos. 22/96 and 25/96) regulates the court system in the Republika Srpska.

59. Article 2 of the law reads as follows:

“Courts shall protect liberties and rights of citizens, lawfully established rights and interests of legal subjects and shall safeguard constitutionality and legality.”

60. Article 17 of the law reads as follows:

“Court of First Instance shall be competent:
(...)
2) in civil suits, to try at first instance;
a) civil legal disputes,
b) disputes in respect of disturbance of property
(....).”

IV. COMPLAINTS

61. The applicant complains that his right to respect for his home as guaranteed by Article 8 of the Convention has been violated. In addition, he complains that his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, has been violated. He further alleges violations of his rights to an effective remedy, as guaranteed by Article 13 of the Convention, and to freedom from discrimination, as guaranteed by Article 14 of the Convention. He also complains of violations of Annexes 6 and 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Articles 39 to 42 of the Law on the Use of Abandoned Property.

V. SUBMISSIONS OF THE PARTIES

62. The respondent Party did not submit any observations. The applicant maintains his complaints.

VI. OPINION OF THE CHAMBER

A. Admissibility

63. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

64. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

65. The Chamber notes that the applicant unsuccessfully applied to the relevant organ under the old Law to regain possession of his properties. Accordingly, he has sought to avail himself of this remedy.

66. In *Onić* (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January–July 1999), the Chamber held that the domestic remedies available to an applicant “must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. ... (M)oreover, ... 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 ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.”

67. The Chamber notes that the applicant also initiated proceedings before the Court in Gradiška against the current occupants of their properties, seeking to regain possession of those properties. The Court declined to consider the case on the ground that it did not have jurisdiction over abandoned property.

68. The Chamber considers that the fact that the Court has declined jurisdiction shows that the initiation, by the present applicant, of court proceedings seeking to regain possession of property did not have any prospect of success either. It cannot therefore be considered to be an effective remedy which the applicant should be required to exhaust.

69. The Chamber notes that the applicant has applied under the new Law to regain possession of his property. He has received a decision from the Commission, entitling him to regain possession of his property. The time-limits for such regaining of possession was, however, not adhered to.

70. As the Chamber noted in its decision in *Onić (sup. cit.)*, in the context of its examination of an analogous law adopted in the Federation of Bosnia and Herzegovina, and in its decision in *Pletilić and others* (case no. CH/ 98/659 *et al.*, decision on admissibility and merits delivered on 10 September 1999, paragraphs 150-152), a remedy such as that provided for by the new Law could in principle qualify as an effective one. It is not, however, for the Chamber to examine the effectiveness of the new Law in general, in isolation from the manner in which it is being applied by the authorities in the context of the cases before the Chamber.

71. In these circumstances, the Chamber finds that the applicant cannot be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy in this context provided for in domestic law.

B. Merits

72. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the Parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for in the Convention and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

73. In his application to the Chamber, the applicant claimed to be a victim of a violation of Article 8 of the Convention which reads, insofar as relevant, as follows:

“Everyone has the right to respect for ..., his home ...

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

74. The Chamber notes that the applicant had lived in the house situated on his property and used it as his home until such times as he was forced to leave. The Chamber has previously held that links that persons in similar situations as the applicant in the present case retained to his dwellings were sufficient for them to be considered to be his “home” within the meaning of Article 8 of the Convention (see, e.g., the aforementioned *Pletilić and others* decision, paragraphs 165-166, and case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraph 3, Decisions and Reports 1998).

75. It is therefore clear that the property is to be considered as the applicant’s “home” for the purposes of Article 8 of the Convention.

76. The Chamber notes that the applicant was forced to leave his home, because of fearing for his safety as a result of the hostilities. The property was then occupied by refugees or displaced persons of Serb origin. The refugees or displaced persons occupied the property concerned in accordance with decisions of the Commission issued in accordance with the old Law. Therefore, the respondent Party was responsible for the interference with the rights of the applicant to respect for his home. The interference is ongoing, as the applicant still has not succeeded in regaining possession of his property.

77. In order to examine whether this interference has been justified under the terms of paragraph

2 of Article 8 of the Convention, the Chamber must examine whether it was “in accordance with the law”, served a legitimate aim and was “necessary in a democratic society” (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

78. The property was considered to be abandoned in accordance with the old Law (see paragraphs 27-35 above). Moreover the applicant tried to regain possession of his property in accordance with Articles 39 and 42 of the old Law. This law sought to provide for a regime for the administration of abandoned property in the Republika Srpska. In accordance with the provisions of this law, the property was occupied by refugees and displaced persons of Serb origin. This fact is certified by the Commission's decision of 5 January 1999.

79. The Chamber must decide whether the old Law can be considered to be a “law” in the context of Article 8 paragraph 2 of the Convention.

80. The Chamber has previously held that the term “law” is related to certain qualitative criteria of a norm, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (see the aforementioned *Kevešević* decision, *loc. cit.*).

81. In the above-mentioned *Kevešević* case, the Chamber held that the concept of the rule of law contains the following three elements: first, the law must be adequately accessible: a citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee with reasonable certainty the consequences of his actions. Thirdly, a law must provide safeguards against abuse.

82. The Chamber notes that the procedure for regaining of possession was set forth in Articles 39-42 of the old Law (see paragraphs 33-35 above). The precise effect of these Articles is unclear. For example, Article 39 allows for the regaining of possession of property within the context of an overall settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia. The Article does not specify what the terms of any such settlement are to be and gives no guidance as to what, if any, procedures are to be followed prior to the conclusion of any such settlement. Article 40 is drafted in such a way as to render it practically impossible for an owner of property who is a refugee to secure possession of it under the Law. Article 42 of the old Law states that Articles 37-41 are to be applied on the basis of reciprocity, without any explanation of how this is to be applied in practical terms. It is accordingly clear that the old Law did not enable a person seeking to regain possession of his or her property to know under what conditions he or she was entitled to regain possession or to establish what actions he or she must take to do so. The law also did not provide any safeguards against possible abuse, but was in itself a source of arbitrariness and abuse.

83. In conclusion, as already established in its decision in *Pletilić and others* (*sup. cit.*), the Chamber finds that the legal provisions in question did not meet the standards required of a “law” under Article 8 paragraph 2 of the Convention. This is in itself sufficient for finding that there has been a violation on these grounds of the applicant's rights as guaranteed by that provision.

84. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a “legitimate aim” or were “necessary in a democratic society”.

85. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of the applicant to respect for his home as guaranteed by Article 8 of the Convention. This violation is ongoing, since the applicant has not yet regained possession of his property, despite the fact that the applicant has sought to regain this possession under the new Law.

86. The Chamber notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, at the present time there is not sufficient evidence to enable the Chamber to rule on the compliance of the new Law with the second paragraph of Article 8 of the Convention.

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

87. The applicant complains that his right to peaceful enjoyment of his possessions has been violated as a result of his inability to regain possession of his property. Article 1 of Protocol No. 1 to the Convention reads as follows:

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

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

88. The Chamber finds that the property concerned constitutes the applicant’s “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention. The applicant is in fact exclusive owner of the property.

89. As already established in its decision in *Pletilić and others* (*sup. cit.*), the Chamber considers that the treatment of the applicant’s property as abandoned by the authorities of the Republika Srpska and its allocation to third parties for use constitutes or constituted an “interference” with the applicant’s right to peaceful enjoyment of his possessions. The interference is still ongoing.

90. The Chamber must therefore examine whether the above interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently certain.

91. The Chamber has further found that the old Law does not meet the standards of a “law” in a democratic society (see paragraphs 83-85 above). This is in itself sufficient to warrant a finding that there has also been a violation of Article 1 of Protocol No. 1

92. In conclusion, in accordance with its decision in *Pletilić and others* (*sup. cit.*), the Chamber finds that there has been a violation of the applicant’s right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1 to the Convention. This violation is ongoing, because the applicant has not yet regained possession of his property, despite the fact that he has sought to regain possession of his property under the new Law.

93. The Chamber again notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, at the present time there is not sufficient evidence to enable the Chamber to rule on the compliance of the new Law with Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

94. The applicant did not specifically claim that his rights as protected by Article 6 of the Convention had been violated. However, in view of the fact that he complained of the conduct of the proceedings he had initiated at national level, the Chamber raised this issue *proprio motu* when it transmitted the applications to the respondent Party for its observations on their admissibility and merits.

95. Article 6 of the Convention reads, in relevant parts, as follows:

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

96. The respondent Party did not submit any observations under this provision.

97. The Chamber recalls that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (see e.g. Eur. Court HR, *Langborger v. Sweden* judgment of 22 June 1989, Series A. no 71, page 12, paragraph 23).

98. The Chamber notes that the applicant initiated proceedings before the court in Gradiška on 13 July 1998. In December 1998, the court rejected the case for lack of jurisdiction, stating that issues concerning the regaining of possession of abandoned property were within the sole jurisdiction of the Ministry. It stated further that the courts were not competent to deal with such issues.

99. The Chamber notes that Article 121 of the RS Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 26 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. Such a removal would require a specific statement to this effect. The old Law states (in Article 3; see paragraph 29 above) that abandoned property is to be temporarily protected and managed by the Republika Srpska. This is done in practice through local Commissions established within the Ministry. However, there is no explicit statement that the courts no longer have jurisdiction. Accordingly, the Chamber does not consider that this is indeed the case.

100. Nevertheless, the practical effect of the court decision is that it has been or would, for the time being at least, be impossible for the applicant to have the merits of his civil action against the current occupants of his property determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. In accordance with the Chamber's decision in *Pletilić and others (sup. cit.)*, there has been a violation of the applicant's right to effective access to court as guaranteed by Article 6 paragraph 1.

4. Discrimination

101. The applicant complained that he had been a victim of a violation of his rights under Article 14 of the Convention, which prohibits discrimination on certain specified grounds in the enjoyment of the rights and freedoms set forth in the Convention. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

"alleged or apparent discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement"

102. The Chamber notes that it has already found violations of the applicant's rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. It must now consider whether the applicant has suffered discrimination in the enjoyment of those rights.

103. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee. As the Chamber noted in its decision in *Đ.M.* (case no. CH/98/756, decision on admissibility and merits delivered on 14 May 1999, paragraph 73, Decisions January–July 1999), these bodies have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see, e.g., case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraphs 86 *et seq.*, Decisions and Reports 1998).

104. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to “secure” the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see the aforementioned decision in *D.M.*, paragraph 75). Analogous obligations are also contained in the Constitutions of Bosnia and Herzegovina and of the Republika Srpska (see paragraphs 15 and 21 above).

105. The Chamber notes that the applicant is of Bosniak origin.

106. The Chamber recalls that the applicant’s ownership of the properties in question has never been in dispute. Nevertheless, his attempts to seek assistance from the authorities in order to regain possession of his property have been unsuccessful, both at the judicial and administrative level.

107. The Chamber notes that the applicant sought to regain possession of his property under the old Law. The Chamber has considered this Law in the context of Article 8 of the Convention (see paragraphs 80-83 above) and concluded that it was drafted in such a way as to deny to refugees and displaced persons any real possibility of regaining possession of their properties.

108. The experience of the present applicant in his attempts to regain possession of his property under this law only serves to reinforce this view. The Chamber notes that the effect of the old Law was to make it extremely difficult for persons who were forced to leave their properties to regain possession of those properties. The effect of the old Law was therefore to reinforce the ethnic cleansing which occurred during the war.

109. The Chamber has already established in its decision in *Pletilić and others* (*sup. cit.*) that the passage and application of Law constitute a discrimination against applicants of Bosniak origin. Almost by definition, the persons who were forced to leave the territory of the Republika Srpska were members of a minority. Accordingly, those are the persons who will suffer as a result of the fact that the old Law did not provide any real possibility of regaining possession of property which those persons had been forced to leave as a result of the war. The old Law will not be used to prevent persons of Serb origin from returning to Gradiška, as they were not required to leave in the first place. On the contrary, the old Law serves to protect the persons of Serb origin who now occupy property which was considered abandoned under the old Law. Accordingly, the effect of the old Law is twofold: it prevents minority return and protects the position of persons of Serb origin who now occupy the properties concerned in the applications. The Chamber recognises the fact that those persons are themselves refugees and displaced persons and that they themselves would, if they were to seek to return to their homes, face the same sort of difficulties as faced by the current applicants. However, this cannot be used as a justification for the passage of the old Law and its application against minority returnees such as the present applicant.

110. In addition, the Chamber has found that the standpoint of the Court in Gradiška (see paragraphs 98-100 above) was such as to deny the applicant his right of access to court. This denial was a consequence of the application by the Court of the old Law. The Chamber notes that the ownership of the property has never been in question. Despite this, the applicant has not managed to regain possession of his property as a result of utilising the different remedies available to him. Accordingly, the evidence before the Chamber suggests that there is a pattern of discrimination consisting of the courts’ and relevant authorities’ failure to deal with claims for repossession of property lodged by returning Bosniaks, or of not enforcing decisions of the Commission rendered in favour of such persons against temporary occupants of Serb origin.

111. In conclusion, the Chamber finds that the passage and application of the old Law constitutes discrimination against the applicant in relation to his right to respect for his home, to peaceful enjoyment of his possessions and of access to court. This discrimination has been based on the ground of national origin.

112. The Chamber concludes that the applicant has been discriminated against in the enjoyment of his rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. Article 13 of the Convention

113. The applicant alleges that his right to an effective remedy guaranteed under Article 13 of the Convention has been violated. Article 13 of the Convention provides as follows:

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

114. The Chamber does not consider it necessary to examine whether there has been a violation of the applicant's rights as guaranteed by Article 13. This is due to the findings the Chamber has made in its examination of the applications under Article 6 of the Convention (see paragraph 100 above).

VII. REMEDIES

115. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of an applicant.

116. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain possession of his property without further delay.

117. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for proceedings, the applicant was afforded the possibility of claiming compensation within the time-limit fixed by the Chamber. The applicant requested that he be enabled to regain possession of his property. In addition, he requested compensation for mental suffering and for his inability to enjoy use of his property.

118. The applicant claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of 5,000 German Marks (DEM). He also claimed compensation for the cost of renting another property, in the sum of DEM 300 per month for 19 months, totalling DEM 5,700. In addition, he claimed DEM 700 for relocation and painting costs.

119. The Chamber notes that the applicant has claimed compensation for mental suffering allegedly caused to him and his wife, as a result of his inability to regain possession of his property in the sum of DEM 5,000. The Chamber considers that such a sum is too high, in view of the prevailing economic situation in the Republika Srpska. The Chamber does however, consider it appropriate to award a sum to the applicant in recognition of the sense of injustice he has no doubt suffered as a result of his inability to regain possession of his property, especially in view of the fact that he has taken various steps to do so. The Chamber does not consider it appropriate to award sums under this head to members of the applicants' families; it can only award such sums to the applicant.

120. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 1,200 Convertible Marks (*Konvertibilnih Maraka*, “KM”) in recognition of his suffering as a result of his inability to regain possession of his property.

121. The applicant also claimed compensation in the sum of DEM 300 per month for 19 months for the rent he allegedly had to pay for his accommodation pending his return to his property. The applicant has not substantiated such a claim. The Chamber considers that, since there is no evidence that the applicant actually had such expenses he should not be awarded compensation in this regard.

122. The applicant claimed DEM 700 for relocation costs, including additional costs, such as repainting, under this head. The Chamber interprets these claims as relating to certain potential future costs the applicant may incur when he regains possession of his property. Also this sum is not

substantiated. Accordingly, the claim under this head must be rejected.

123. Additionally, the Chamber awards 4 % interest as of the date of expiry of the three-month time period set for the implementation of the present decision, on the sum awarded in paragraph 120.

VIII. CONCLUSIONS

124. For the above reasons, the Chamber decides,

1. by 6 votes to 1, to declare the application admissible;
2. by 6 votes to 1, that there has been a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
3. by 6 votes to 1, that there has been a violation of the right of the applicant to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
4. by 6 votes to 1, that the impossibility for the applicant to have the merits of his civil actions against the current occupants of his property determined by a tribunal constitutes a violation of his right to effective access to court within the meaning of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
5. by 6 votes to 1, that the enactment of, and application by the authorities of the Republika Srpska of the Law on the Use of Abandoned Property in the applicant's case constituted discrimination against him on the ground of national origin, in the enjoyment of his rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;
6. unanimously, that it is not necessary to rule on the complaints under Article 13 of the Convention;
7. unanimously, to order the respondent Party to enable the applicant to regain possession of his property without further delay;
8. by 6 votes to 1, to order the respondent Party:
 - (a) to pay to the applicant within three months of the delivery of this decision the sum of KM 1,200 (one thousand two hundred Convertible Marks) by way of compensation for mental suffering;
 - (b) to pay simple interest at the rate of 4 (four) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above three-month period until the date of settlement; and
9. by 6 votes to 1, to order the respondent Party to report to it by 8 January 2000 on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel