DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 October 1999)

Case no. CH/97/70

Ćazim LAČEVIĆ

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 4 October 1999 with the following members present:

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

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

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

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

I. INTRODUCTION

1. The applicant exchanged his house in Herceg Novi (Montenegro) for a Yugoslav National Army ("JNA") apartment in Sarajevo which had been purchased by M.G. from the Army Housing Fund on 6 December 1991. On 15 January 1992 the exchange contract was concluded and shortly afterwards M.G. moved into the house in Herceg Novi and the applicant's daughter's family moved into the apartment in Sarajevo. The applicant also moved to the apartment in September 1992. Neither M.G. nor the applicant had their respective ownership recognized or entered into the Land Register. On 30 September 1992 the apartment in Sarajevo was declared abandoned. The applicant and his family were threatened by the Army Housing Fund with eviction throughout and after the war, until the beginning of 1998. The applicant alleges a violation of his right to peaceful enjoyment of his apartment which he considers to be his property. The case raises issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application as directed against the Federation of Bosnia and Herzegovina was introduced on 25 September 1997 and registered on 25 November 1997. The applicant is represented by his son-in-law, Mr. Elvedin Mehić, and by Mr. Ismet Mehić.

3. On 15 May 1998 the Chamber decided to transmit the application to the Federation for observations on the admissibility and merits thereof.

4. The Federation submitted observations on 15 June 1998. The applicant replied to the Chamber on 14 July 1998.

5. On 14 January 1999 the Chamber decided to hold a public hearing in February 1999. This was later postponed to 10 March 1999.

6. Considering that the case might also raise issues attracting the responsibility of Bosnia and Herzegovina, the Chamber, by a letter of 17 February 1999, transmitted the application also to Bosnia and Herzegovina as respondent Party for observations. On the same day, the Chamber invited the two respondent Parties to the public hearing.

7. On 9 March 1999 the Federation submitted an additional written statement and the applicant sent additional documents to the Chamber. Bosnia and Herzegovina did not submit any written observations.

8. At the public hearing on 10 March 1999 appeared the applicant's representative Mr. Elvedin Mehić, the Agent of Bosnia and Herzegovina Mr. Jusuf Halilagić, and the Agent of the Federation Ms. Seada Palavrić.

9. As requested at the public hearing, the applicant on 17 March 1999 submitted additional information and documentation in support of his application.

10. The Chamber deliberated on the case on 14 January, 10 March, 15 April, 11 September and 4 October 1999.

III. ESTABLISHMENT OF THE FACTS

11. In September 1991 the applicant advertised in a newspaper that he wished to exchange his (at the time partly constructed) house in Herceg Novi (Ustanička 51) for an apartment in Sarajevo. M.G. responded and offered, in exchange, an apartment located in Sarajevo (Ciglane), ul. Merhemića trg 10/III, apartment 32.

12. M.G. purchased his apartment from the Army Housing Fund of the JNA by a purchase contract

(No. 3513-501/4) of 5 December 1991. The contract was confirmed as legally valid by the Military Attorney and certified on 6 December 1991 by the Court of First Instance II in Sarajevo. M.G. paid the full purchase price due for the apartment on 20 December 1991, and accordingly received a receipt for the purposes of registering his property right over the apartment into the Land Register. However, he was not registered as the owner of the apartment, as this was not possible at the time.

13. On 15 January 1992 the applicant and M.G. concluded an exchange contract in respect of the house and the apartment. Shortly afterwards, M.G. moved into the house in Herceg Novi and Ms. Zagora, the applicant's daughter, and her family moved into the apartment in Sarajevo. The exchange contract was not confirmed by a court. Neither the applicant nor M.G. registered their respective ownership in the Land Registers. The applicant also moved to the apartment on 30 September 1992 after having been expelled from his apartment in Grbavica because of his Bosniak origin.

14. On 30 September 1992 the Sarajevo apartment was declared abandoned. The applicant alleges that he never received this decision but filed an appeal against it to the Commission for Housing Affairs of the General Staff of the Army on 11 November 1992, immediately after he had learned about the existence of the decision. No decision with respect to the appeal has been made.

15. On 20 October 1992 the Headquarters of the Armed Forces issued an order based on Article 8 of the Decree on Abandoned Apartments, requesting Ms. Zagora and her family to voluntarily vacate the apartment. The order stated that they occupied the apartment without any legal ground and threatened them with eviction.

16. According to the applicant, several other attempts were made by the General Staff of the Army to evict the applicant and his family. In 1996, the applicant moved back to his other apartment in Grbavica and his other daughter, Ms. Ferida Lačević-Mehic, moved into the apartment in question with her husband and children. No written records or minutes were made of these eviction attempts except for the one on 1 October 1997 when the General Staff of the Army attempted to evict Ms. Zagora and her family, considering them "illegal occupants". According to the minutes of this eviction attempt, it was agreed that the apartment would be vacated soon thereafter, which nonetheless did not happen.

17. The applicant's representative protested against the eviction attempts by a letter to the Federal Ministry of Defence of 28 January 1998 and asserted the applicant's right to the apartment. The Ministry replied on 6 February 1998 that the occupants of the apartment were considered "illegal", as they were neither members of the family of M.G. nor persons protected by Article 6 of the Law on Housing Relations. As M.G. had not become owner of the apartment he could not legally have exchanged it as his property.

18. No attempts to evict the applicant or his family have taken place after this exchange of letters.

19. M.G. confirmed by a letter of 9 March 1999 that he is using the house in Herzeg Novi in accordance with the contract on the exchange of real estate concluded in January 1992. He has to pay property tax on the house to the authorities of Herzeg Novi.

IV. RELEVANT DOMESTIC LAW

A. JNA Apartments

20. The apartment acquired by the applicant through the exchange contract was originally social property over which the JNA had jurisdiction. Social property was property considered to belong to society as a whole. M.G. enjoyed an occupancy right over the apartment which conferred the right, subject to certain conditions, to occupy the apartment on a permanent basis.

21. M.G. purchased the apartment under the Law on Securing Housing for the Yugoslav Army (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRJ" - no. 84/90). This law of the Socialist Federal Republic of Yugoslavia 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 e.g. cases nos. CH/96/3 et al., *Medan, Bastijanović and Marković*, decision on the merits delivered on 7 November 1997, paragraphs 9-13, Decisions on Admissibility and Merits 1996–1997).

22. These legal instruments included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property, issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" - no. 4/92). Subsequently, a Decree with force of law, issued on 3 February 1995 by the Presidency of the Republic (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG 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 suspended court proceedings until new housing legislation was adopted. The Decree entered into force on 10 February 1995, the date of its publication in the Official Gazette.

23. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (OG 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 Republic of Bosnia and Herzegovina on 18 January 1996 and promulgated on 25 January 1996 (OG RBiH, no. 2/96).

24. The Decree of 22 December 1995 also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a law to be adopted in the future. On 6 December 1997 the Law on the Sale of Apartments with an Occupancy Right (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – no. 27/97) came into force. This law was amended by a law of 23 March 1998 (OG FBiH no. 11/98). Neither law affected the annulment of M.G.'s contract. Article 39 of the 1997 Law stipulated that an occupancy right holder who contracts to purchase an apartment which he had contracted to purchase previously on the basis of, *inter alia*, the Law on Securing Housing for the JNA, shall be credited with the amount of the purchase price earlier paid.

25. According to Article 39(a) of the new Law on Amendments of the Law on the Sale of Apartments with an Occupancy Right (OG FBiH, no. 27/99) which entered into force on 6 July 1999, the Federation Ministry of Defence shall issue an order for the registration of an occupancy right holder as the owner of the apartment with the responsible court if he or she was the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence, uses the apartment legally and if he or she entered into a legally binding contract on the purchase of the apartment before 6 April 1992 in accordance with the law referred to in paragraph 21 above.

B. Abandoned Property

1. The 1994 Law on Abandoned Apartments

26. On 15 June 1992 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with the force of law on Abandoned Apartments (OG RBiH nos. 6/92, 8/92, 16/92, 13/94, 9/95 and 33/95). This Decree was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 1 June 1994 ("the old Law"). This Law governed the re-allocation of occupancy rights over socially-owned apartments which had been abandoned. It was repealed on 4 April 1998.

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

27. The Law on the Cessation of the Application of the Law on Abandoned Apartments (OG FBiH

nos. 11/98, 38/98, 12/99, 18/99 and 27/99; "the new Law") entered into force on 4 April 1998. According to this legislation all administrative, judicial and other decisions terminating occupancy rights on the basis of regulations issued under the old Law shall be null and void.

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

29. The new Law mainly regulates how the occupancy right holder is entitled to seek his or her reinstatement into the apartment and prescribes time-limits for the request for reinstatement and the decisions of the competent authority. The new Law was amended on several occasions, most recently by decisions of 13 April and 2 July 1999 of the High Representative in accordance with his authority under Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina (see OG FBiH nos. 18/99 and 27/99 of 20 May and 5 July 1999 respectively).

C. Law on the Transfer of Real Property

30. Article 9 paragraph 2 of the Law on the Transfer of Real Property (OG SRBiH nos. 38/78, 4/89, 29/90, 22/91, and OG RBiH nos. 2/92, 13/94 and 18/94) determines that a contract by which the right of ownership of a real estate is transferred must be made in written form. The signatures of the contracting parties must be validated by the competent court.

31. Article 9 paragraph 4 stipulates an exception to the above-mentioned rule in that a contract concluded in written form shall have legal effect even if the signatures of the contractual parties are not validated by the competent organ, provided the contracting parties have completely or in the main part performed their obligations under the contract.

V. COMPLAINT

32. The applicant alleges a violation of his right to peaceful enjoyment of his apartment which he considers to be his property.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Parties

1. Bosnia and Herzegovina

33. Bosnia and Herzegovina protests against being named as respondent Party. Further, Bosnia and Herzegovina considers that the application is inadmissible *ratione temporis*, and for non-exhaustion of domestic remedies.

34. As to the merits, Bosnia and Herzegovina submits that while M.G.'s occupancy right is not contested, he never gained a property right over the apartment. The contract on the exchange of real estate was invalid from the outset (*ab initio*). At present, it is not possible to validate the legal transaction between the parties through, for example, conclusion of a new contract. There are no diplomatic relations between Bosnia and Herzegovina and the Federal Republic of Yugoslavia nor a treaty or procedure that would govern the transfer of property located in the respective states and between citizens of the two states.

2. The Federation of Bosnia and Herzegovina

35. The Federation objects that the applicant has not made use of any domestic legal remedy against the administration's failure to decide his appeal against the decision to declare the apartment abandoned. Such remedies are, according to the Federation, provided by the Laws on Administrative Proceedings and on Administrative Disputes. Also, the applicant could have initiated civil proceedings with a view to seeking confirmation of the contract on the exchange of real property.

36. The Federation does not deny the fact that M.G. was the occupancy right holder of the apartment in Sarajevo and that he concluded a valid purchase contract with the former JNA. However, as M.G. had not been recorded in the Land Register as the owner of the Sarajevo apartment, he was legally not able to exchange that property. The Federation also contests the validity of the subsequent contract between the applicant and M.G on the ground that the signatures of the parties have not been verified by the competent court as foreseen in the respective law.

37. Also, the real estates are situated in two different independent states, in Bosnia and Herzegovina, and in the Federal Republic of Yugoslavia. Due to the lack of diplomatic relations between the two states and agreements on contractual and real property issues, the exchange contract could not be validated or concluded anew.

38. Regarding the decision to declare the applicant's apartment abandoned, the Federation submits that, as it was taken pursuant to the old Law, it was invalidated by the new Law. There were no further decisions taken concerning the applicant's right to use the apartment, and the applicant and his family were not disturbed while using it. Accordingly, there could be no violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

39. The Federation further submits that, as the applicant has not exhausted domestic remedies, Article 6 of the Convention could not have been violated.

B. The applicant

40. The applicant stresses the fact that to date it has been impossible for a purchaser of a JNA apartment to register as its owner. In any case, he submits, such contracts have been annulled retroactively by the later legislation on JNA apartments.

41. The applicant concedes that the signatures in the contract on the exchange of real estate have not been verified by a court. However, he alleges that it was impossible for M.G. to attend this procedure as he was serving in the former JNA at that time. The applicant underlines that both sides have signed the exchange contract, executed it *de facto* and are still using the dwellings obtained through the exchange contract.

42. The applicant considers the attempts to evict him and his family to be a violation of his right to peaceful enjoyment of his apartment. He concedes, however, that no such attempts have been made after the beginning of 1998.

VII. OPINION OF THE CHAMBER

A. Admissibility

43. Before considering the case on its merits, the Chamber must first decide, taking into account the criteria set out in Article VIII(2) of the Agreement, whether it is admissible. Article VIII(2) provides, as far as relevant, as follows:

> "2. The Chamber shall decide which applications to accept.... In so doing the Chamber shall take into account the following criteria:

(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted....

(c) The Chamber shall also dismiss any application which it considers incompatible with the Agreement,..."

1. Competence *ratione personae*

44. Bosnia and Herzegovina has argued that it cannot be considered a respondent Party in this case. It is true that the applicant submitted his application against the Federation only. The Chamber recalls that its jurisdiction extends to alleged or apparent violations of the rights and freedoms provided for in the relevant international human rights treaties appended to the Agreement, *inter alia,* where such a violation is alleged or appears to have been committed by one or several of the Parties to the Agreement. The Chamber notes the complexity of the legal and constitutional arrangements of Bosnia and Herzegovina because of which it would be unreasonable to expect applicants to be able in all circumstances to address the correct respondent Party. This approach is in line with the object and purpose of the right of individual petition provided by the Agreement.

45. It is on the above basis that the Chamber has consistently considered that it is not restricted by the applicant's choice of respondent Party. In its case law the Chamber has repeatedly found violations of the Agreement to have been committed by a respondent Party designated by the Chamber itself (see, e.g., case no. CH/96/31, *Turčinović,* decision on the admissibility of 9 May 1997, paragraph 11, Decisions on Admissibility and Merits 1996-1997). On the basis of its competence under the Agreement the Chamber has further provided, in Rule 33(1) of its Rules of Procedure, that it may, *proprio motu*, take any action which it considers expedient or necessary for the proper performance of its duties under the Agreement.

46. The Chamber therefore rejects the argument of Bosnia and Herzegovina that it is precluded from examining, for the purposes of the Agreement, the potential responsibility of Bosnia and Herzegovina for the events complained of (cf. the Chamber's findings in case no. CH/97/67, *Zahirović*, decision on admissibility and merits delivered on 8 July 1999, paragraphs 93-95, Decisions January-July 1999).

2. Requirement to exhaust effective domestic remedies

47. The Federation argues that the applicant has failed to exhaust domestic remedies by not contesting the decision to declare his apartment abandoned and by omitting to have the exchange contract between M.G. and himself confirmed by a court. The Chamber considers, however, that with regard to the decision to declare the apartment in question abandoned, the question of the exhaustion of domestic remedies is now moot, as such decisions were declared null and void under the new Law. In any case, the local authorities later based their threats of eviction on the fact that the applicant had not legally acquired the apartment from M.G., and not on the decision to declare it abandoned. In addition, there was no need for the applicant to apply for reinstatement into the apartment under the new Law as his daughter and her family continued to stay in the apartment.

48. As to the applicant's alleged failure to have his exchange contract confirmed by a court, the Chamber notes that his rights to the apartment derive from M.G.'s purchase contract of December 1991 with the JNA which had not been registered at the time of the exchange. The Chamber further notes that, at the end of 1991 and in the beginning of 1992, purchase contracts of JNA apartments were often not registered even if the purchasers as M.G. had paid the purchase price and received all necessary certification. Shortly after the conclusion of the exchange contract, M.G. left for Herceg Novi in Montenegro. At the same time, the sale of JNA property was temporarily suspended and the registration of property purchased from the JNA was refused and related court proceedings stalled.

49. Thereafter, a Decree issued on 3 February 1995 by the Presidency of the Republic (OG 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 (see cases no. CH/96/2 *et al.*, *Podvorac and others*, decision on admissibility and merits delivered on 12 June

1998, paragraph 54, Decisions and Reports 1998).

50. Even after the enactment of the new legislation of July 1999, which requires the Federation Ministry of Defence to issue orders to the competent court to register an occupancy right holder as owner if he or she had purchased the apartment before 6 April 1992 and resided in it as legal occupant (see paragraph 25 above), the Chamber considers that there is no effective remedy available to the applicant as the position he derives from M.G.'s legal position would not have been recognized.

51. The Chamber finds, therefore, that the applicant could not be required to exhaust the domestic remedies referred to. As no other ground for declaring the case inadmissible has been shown, the Chamber declares the application admissible.

B. Merits

52. Under Article XI of the Agreement the Chamber must address the question whether the facts established above indicate a breach by one or both of the respondent Parties of 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 recognized human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention.

53. The applicant complains that the threats to evict him from the apartment in question amounted to a violation of his right to the enjoyment of his possessions. 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."

54. The applicant's complaint only raises issues under Article 1 of Protocol No. 1 to the Convention if he had acquired a legal position protected as "possession" within the meaning of this provision. The Chamber recalls that the Convention uses an autonomous notion of what constitutes possessions, and this may extend beyond the definition of property in the relevant national law. However, in the present case, the Chamber has to have regard to the transactions and their legal validity according to the national law when establishing whether the applicant has acquired a legal position – with regard to the apartment – that is to be protected as a "possession".

55. The Chamber has held in previous decisions that a contractual right relating to a JNA apartment can be considered a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention even if that right is subject to some uncertainty (see *Medan, Bastijanović and Marković* and *Podvorac and others*, loc. cit., paragraph 33 and paragraph 61, respectively).

56. The applicant argues that he became the owner of the apartment on the basis of the exchange contract with M.G. The latter had purchased the apartment in December 1991 but was not registered as owner in the Land Register. That contract of purchase was annulled retroactively by the Decree issued on 22 December 1995 and was only recognized by legislation passed in July 1999 (see paragraphs 24-25 above). There are no reasons to doubt the validity of the purchase contract, and M.G. paid the full purchase price due. Therefore, the Chamber concludes as in the above-mentioned decisions that the right acquired by M.G. in respect of the apartment constitutes a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention. Furthermore, M.G.'s acquired position was a valuable one and must be considered, in the circumstances that prevailed in the country, a transferable asset.

57. Both respondent Parties contest that the applicant has acquired rights in respect of the apartment, arguing that the exchange contract was invalid because it did not fulfill the formal

requirements set out by the applicable law. It is true that the Law on the Transfer of Real Estate generally requires an exchange contract concerning real estate to be verified by the competent court (see Article 9 paragraph 2 of that Law as set out in paragraph 30 above). However, an exception is permitted if both contracting parties have carried out, completely or in their main part, the obligations flowing from the contract (see Article 9 paragraph 4 of that Law as set out in paragraph 31 above). As the applicant and M.G. have in fact exchanged property and assumed the obligations of an owner, it appears that the conditions for an exception from the normal formal requirements are met.

58. Thus, the exchange contract is valid, thereby conferring rights or assets to the applicant which, even if not formally validated under domestic law, fall within the scope of "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. Because of this finding, the Chamber does not consider it necessary to examine the argument of the respondent Parties with regard to the non-existing diplomatic relations between Bosnia and Herzegovina and the Federal Republic of Yugoslavia.

59. As the effect of the Decree (see paragraphs 24 and 56 above) was to annul those rights, the applicant has been deprived of his possessions. The Chamber has found in several other cases (see *Medan, Bastijanović and Marković* and *Podvorac and others)* that this deprivation of possession was not "in the public interest" and "subject to the conditions provided for by law" and thus constituted a violation of the purchasers' rights.

60. The Chamber notes that the legislation posterior to the Decree of 22 December 1995 and the related law of 18 January 1996 could not revalidate the original purchase contract retroactively, that is to say with effect from the date when this contract was concluded. In earlier decisions regarding apartments formerly owned by the JNA (see *Medan, Bastijanović and Marković* and *Podvorac and others)* the Chamber has found that the purchasers were 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. The legislation issued after the Chamber's decision in *Medan, Bastijanović and Marković* (see paragraph 22 above) did not change the situation of the purchasers concerned.

61. In addition, the Chamber notes that the new provisions introduced on 6 July 1999, allowing registration of the formerly annulled contracts, does not exclude a finding of a violation of Article 1 of Protocol No. 1 of the Convention as the eviction attempts complained of were based on the non-recognition of the applicant's right to the apartment which is not remedied by the new legislation.

62. Even if the present case differs from the other cases relating to apartments formerly owned by the JNA as the applicant had not purchased a "JNA apartment" himself but had come into possession of the apartment in question from a person who had concluded such a purchase contract, the violation of the applicant's property rights is comparable. Hence, the Chamber sees no reason to deviate from its earlier decisions in those cases.

63. Therefore, the attempts to evict the applicants daughter and her family from the apartment based on the non-recognition of the applicant's right to the apartment, constitute a violation of his right to the enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. The Federation, whose organs threatened with the eviction, is thereby in breach of its obligations under Article I of the Agreement.

64. With respect to the State of Bosnia and Herzegovina, the Chamber notes its previous decisions regarding apartments formerly owned by the JNA (see, for example, *Medan, Bastijanović and Marković*, paragraphs 44-47). As the institutions of the State were responsible for passing the legislation which annulled M.G.'s contract from which the applicant derives his position, Bosnia and Herzegovina is also in breach of its obligations under Article I of the Agreement.

VIII. REMEDIES

65. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief

(including pecuniary and non-pecuniary damages).

66. The applicant has requested the Chamber to enable him to be recognized as owner of the apartment and to enjoy his possessions without interference. He has made no request for compensation.

67. Some of the findings in relation to the violation of Article 1 of Protocol No. 1 to the Convention arose from the legislation referred to above (paragraphs 21-25, 56, 59-61 and 64). 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 recognizes and applies it. Therefore, the Chamber will order exclusively the Federation to take action in this case.

68. The Chamber finds it appropriate to order the Federation to refrain from any act threatening the applicant and his family with eviction from the apartment at ul. Merhemića trg 10/III, no. 32, Sarajevo (Ciglane).

69. The Chamber finds further appropriate to order the Federation, in recognition of the purchase contract of 6 December 1991 and the exchange contract of 15 January 1992, to permit the applicant to validly apply for registration as owner of the apartment in question in accordance with the Law on Amendments of the Law on the Sale of Apartments with an Occupancy Right which entered into force on 6 July 1999.

IX. CONCLUSION

70. For these reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the attempts by the Federation of Bosnia and Herzegovina authorities to evict the applicant and his family from the apartment at ul. Merhemića trg 10/III, no. 32, Sarajevo (Ciglane), based on the non-recognition of the application's right to the apartment, have violated the applicant's rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Federation thereby being in breach of its obligations under Article I of the Human Rights Agreement as set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

3. unanimously, that the non-recognition of the applicant's right to the apartment at ul. Merhemića trg 10/III, no. 32, Sarajevo (Ciglane), based amongst others on legislation passed by the authorities of Bosnia and Herzegovina, has violated the applicant's rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights, Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

4. unanimously, to order the Federation of Bosnia and Herzegovina to refrain from any act threatening the applicant and his family with eviction from the apartment at ul. Merhemića trg 10/III, no. 32, Sarajevo (Ciglane);

5. unanimously, to order the Federation of Bosnia and Herzegovina, in recognition of the purchase contract of 6 December 1991 and the exchange contract of 15 January 1992, to permit the applicant to validly apply for registration as owner of the apartment at ul. Merhemića trg 10/III, no. 32, Sarajevo (Ciglane) in accordance with the Law on Amendments of the Law on the Sale of Apartments with an Occupancy Right which entered into force on 6 July 1999;

6. unanimously, to order the Federation of Bosnia and Herzegovina to report to it by 7 January 2000 on the steps taken by it to give effect to this decision.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel