DECISION ON ADMISSIBILITY AND MERITS
(delivered on 13 January 2000)

Case no. CH/98/1374

Velimir PRŽULJ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 January 2000 with the following members present:

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

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

Having considered the admissibility and merits of the aforementioned application referred to it by the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") 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. In January 1997 the applicant, a Republika Srpska policeman, was arrested by the Federation police in the vicinity of the Inter Entity Boundary Line at Vraca, Sarajevo, on charges of genocide and war crimes. In the course of his arrest and on the way to the police station, he was maltreated by his captors. The following day the investigation was terminated and the applicant released.

2. The application raises issues under Articles 3 and 5 of the European Convention on Human Rights. It also raises the question whether the applicant was discriminated against in the enjoyment of the rights guaranteed by these provisions.

II. PROCEEDINGS BEFORE THE OMBUDSPERSON

3. The case was introduced by the applicant to the Ombudsperson on 26 March 1997 and registered on 28 March 1997.

4. By a decision of 19 February 1998 the Ombudsperson decided to open an investigation into the possible violation of Articles 3 and 5 of the Convention. In the course of the investigation, the Ombudsperson had several contacts with the International Police Task Force (henceforth "IPTF"). On 21 July 1997 two representatives of the Ombudsperson's Office visited the Kasindol Hospital, where they met the director, Dr. Slavko Ždrale, and inspected the applicant's medical records.

5. On 25 February 1998 the Ombudsperson invited the respondent Party to submit written observations on the admissibility and the merits of the case, but the respondent Party never replied.

6. On 18 December 1998 the Ombudsperson referred the case to the Chamber pursuant to paragraph 5 of Article V of the Agreement (see paragraph 96 below).

III. PROCEEDINGS BEFORE THE CHAMBER

7. On 21 December 1998 the case was registered with the Chamber.

8. On 9 February 1999 the Chamber decided to transmit the case to the respondent Party for its observations on admissibility and merits under Rule 49(3)(b) of the Rules of Procedure.

9. The respondent Party's observations were received on 18 May 1999 and transmitted to the applicant for his reply on 20 May 1999. In the same letter the applicant was reminded that any claim for compensation had to be submitted in written form within a month. No reply was received within the time allotted. According to the applicant and his lawyer, neither of them received the respondent Party's observations.

10. On 8 July 1999 the Chamber decided to re-transmit the respondent Party's observations to the applicant and to extend the time-limit for submission of comments thereto and of the compensation claim. The applicant's reply was received on 25 August 1999.

11. On 7 October 1999 the Chamber held a public hearing on admissibility and merits of the application in the Cantonal Court building in Sarajevo. The applicant was present and represented by Mr. Miroslav Drašković, a lawyer practicing in Belgrade. The respondent Party was represented by Ms. Safija Kulovac, lawyer of the respondent Party's Office for Cooperation with and Representation before the Human Rights Commission. The Ombudsperson was represented by Mr. Nedim Osmanagić, Deputy Ombudsperson, Ms. Tanja Rakusić-Hadžić, Senior Legal Expert, and Mr. Feđad Začiragić, Legal Expert.

12. The Chamber heard addresses from the applicant's representative, from Mr. Začiragić for the Ombudsperson and from Ms. Kulovac for the respondent Party. It then heard the evidence of the following witnesses: Dr. Milan Pejić, Dr. Slavko Ždrale, Dr. Zoran Kezunović, Dr. Slobodan Đokić, Ms. Milojka Pržulj, Ms. Svjetlana Pržulj, Mr. Nermin Fazlagić, and Mr. Obren Šehovac. Of the

witnesses summoned, only Mr. Nedim Dizdarević failed to appear. The members also put questions to the applicant and to the representative of the respondent Party. Both the applicant and the respondent Party submitted documents to the Chamber. The respondent Party informed the Chamber that the Office of the Public Prosecutor in Sarajevo had refused to produce the request to open an investigation against the applicant as requested by the Chamber through the Agent of the respondent Party.

13. On 14 October 1999 the Chamber requested additional documents from the applicant and the respondent Party. On 18 October 1999 the Chamber requested certain information from IPTF. The reply by IPTF was received on 9 December 1999. On 1 November 1999 the Chamber received additional observations from the respondent Party.

14. On 29 November 1999 the Chamber requested from the applicant documents substantiating his compensation claim for medical expenses. No reply was received from the applicant.

15. On 8 October, 2 and 4 November, 8 and 9 December 1999 and 10 January 2000 the Chamber deliberated on the admissibility and merits of the case. On the last mentioned date it adopted the present decision.

IV. ESTABLISHMENT OF THE FACTS

A. The undisputed facts of the case

16. Most of the facts of the case are in dispute among the parties, and the Chamber has received contradictory evidence in their respect. The following facts are not in dispute.

17. The applicant is a citizen of the Federal Republic of Yugoslavia of Serb descent, residing in Srpsko Sarajevo, Republika Srpska, Bosnia and Herzegovina. At the time of the events he was an officer of the Republika Srpska police serving in Srpsko Sarajevo.

18. On 26 January 1997, around noon, the applicant was arrested by at least two Federation policemen in Derviša Numica street, on or in the immediate vicinity of the Inter Entity Boundary Line ("IEBL") at Vraca, Sarajevo. The applicant was armed but did not make any use of his gun. His arrest involved the use of force by the Federation police. The applicant was taken to the Federation police station Novo Sarajevo, from where some hours later he was transferred to the Sarajevo Public Security Centre. The next morning he was visited by IPTF officers, who informed him that he was being detained on charges of genocide and war crimes. The applicant then received a decision, dated 27 January 1997, by the then High Court in Sarajevo (now Cantonal Court), terminating the investigation against him. The applicant was released the same day and taken back to Srpsko Sarajevo by IPTF.

B. The applicant's submissions as to the facts

19. The applicant has made submissions as to the facts of his arrest in the application to the Ombudsperson, in an additional statement given to the Ombudsperson on 4 September 1997, in his written submissions to the Chamber of 25 August 1999, and especially at the public hearing. His version of the facts giving rise to his complaints may be summarised as follows.

20. On 26 January 1997, around noon, the applicant arrived at the IEBL at Vraca in a car with his mother and sister in order to meet Mr. S.H., a lawyer from Sarajevo. The purpose of the meeting with S.H., which did not take place, was to sign and hand over a power of attorney for the sale of real property in Sarajevo owned by the applicant, his mother and sister. While the applicant's mother and sister waited in the car at a certain distance, the applicant stood on the Republika Srpska side of the separation line waiting for the lawyer. Between 12.20 and 12.30 p.m. he was approached by a man in civilian clothes (identified at the public hearing as witness Nermin Fazlagić, see paragraphs 38 and following below), who asked him to produce his identity card. While the applicant reached into his pocket to find the requested document, he was assaulted by Mr. Fazlagić, who was immediately joined by a second man in civilian clothes. The second man kicked the applicant in his face and on

other parts of his body. A police van approached and policemen in uniform dragged the applicant into the back of the van. There the applicant was physically maltreated and verbally abused with reference to his ethnic background. The applicant was handcuffed and the maltreatment became more severe, as he could no longer protect his face with his hands from the fists and feet of the attackers. The applicant started bleeding and then lost consciousness. The Federation police also took the applicant's official gun which fell out of its pocket during the maltreatment.

21. The applicant regained consciousness upon arrival at the police station Novo Sarajevo, were he was uncuffed and allowed to wash his face. The applicant was briefly visited by an IPTF officer. He was not interrogated, but overheard that he was under investigation for crimes under Articles 141 and 142 of the, then still applicable, Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFR Yugoslavia"), i.e. genocide and war crimes.

22. Half an hour or an hour later the applicant was again handcuffed and taken by car to the Sarajevo Security Centre by two men in civilian clothes. On the way to the Sarajevo Security Centre he was again verbally abused with reference to his ethnic background.

23. At the Sarajevo Security Centre the applicant was uncuffed. He met several acquaintances among Federation police officers and related what had happened to him to two senior Federation police officers, Messrs. Sejfo Sejfić and Jozo Andžić. The applicant was again visited by two IPTF officers, but the Federation police would not allow the applicant to speak to the IPTF officers alone. Therefore, when asked about the bruises on his face, the applicant stated that he injured himself entering the police van. The applicant also states that he was told by one of the IPTF officers that he was on a secret list of persons indicted for war crimes kept by the Federation authorities. This list allegedly comprised two and a half thousand policemen who at the outbreak of the war stopped working for the Ministry of Interior of the Republic of Bosnia and Herzegovina and joined the Republika Srpska police forces.

24. From the Sarajevo Public Security Centre the applicant was taken to the Sarajevo Central Prison where he spent the night. The following day, the applicant received a decision by the Sarajevo High Court, dated 27 January 1997, terminating the investigation against him. He was released in the afternoon of that day and taken back to his police station in Srpsko Sarajevo by IPTF.

25. During the following days the applicant's arrest and detention were extensively covered by TV-stations and newspapers in the Federation. The applicant was portrayed as a war criminal and as a member of a criminal gang involved in the trafficking of stolen cars and the murder of taxi drivers.

26. On 28 January 1997 the applicant visited the Clinic Centre of the General Hospital Kasindo, Republika Srpska, where he was visited and received treatment as an outpatient by an otorinolaryngologist, Dr. Pejić, and by a surgeon, Dr. Ždrale.

27. On 7 February 1997 the applicant also visited the Psychiatric Hospital in Sokolac, as the feelings of stress and anxiousness he suffered since the incident did not recede. There he was visited by Dr. Kezunović, who prescribed painkillers and psychopharmaceutical drugs. At the public hearing the applicant stated that he continued to suffer from insomnia, anxiousness, unwillingness to socialise and even hallucinations. He therefore visited a general practitioner in Srpsko Sarajevo, who in October 1998 referred him back to the Psychiatric Hospital in Sokolac. The applicant was hospitalised at the hospital in Sokolac from November 1998 to April 1999. Moreover, due to the psychological damage suffered as a result of the incident, he has been on sick leave since July 1998.

C. The respondent Party's submissions as to the facts

28. The respondent Party disputes most of the factual allegations made by the applicant. With regard to the applicant's arrest, it points to the contradictions between the testimonies of the applicant's mother and sister. The respondent Party disputes that the applicant's presence was due to an appointment with a lawyer supposed to come from Federation territory. It also states that the applicant was arrested on the territory of the Federation.

29. As to the grounds for the applicant's arrest and detention, the respondent Party appears to

claim that the applicant was arrested because he failed to produce his identity card when requested and tried to escape, while he was later on detained on charges of genocide and war crimes. The respondent Party states that the applicant was informed of the reasons for his arrest and detention, i.e. the investigation against him, at the police station Novo Sarajevo.

30. As to the applicant's alleged maltreatment at the hands of Federation policemen, the respondent Party states that in the light of the short duration of the journey and of the limited space in a police van, it is implausible that the applicant was physically abused on the way from Vraca to the Novo Sarajevo police station. It further recalls that the applicant denied having been maltreated when asked by the IPTF officers.

31. The respondent Party also disputes the formal validity and substantial accuracy of the medical documentation produced by the applicant. Regarding the psychological trauma allegedly suffered by the applicant, the respondent Party submits that the applicant continued to work as an armed policeman after the incident, which would constitute a violation of medical professional rules and regulations governing the police officers' duties. The respondent Party vigorously disputes the existence of a causal link between the applicant's alleged maltreatment and detention in January 1997 and his hospitalisation in November 1998. With respect to the applicant's ongoing sick leave and reduced income, finally, the respondent Party emphasises that the document submitted by the applicant does not constitute relevant and sufficient evidence, and that the applicant should have been required *ex officio* to be examined by a pension and disability assessment panel.

D. Oral testimony

1. Ms. Milojka Pržulj

32. Ms. Milojka Pržulj, the applicant's mother, stated that on 26 January 1997 she and her daughter, Ms. Svjetlana Pržulj, were supposed to meet a lawyer from Sarajevo, Mr. S.H., on the IEBL at Vraca. To this end they had driven to Vraca and at 12 noon parked at about 20 meters from the separation line. While she and her daughter were waiting in the car, the applicant was standing on the Republika Srpska side of the line and waiting for the lawyer. At 12.20 p.m. the applicant was approached by two men in civilian clothes and suddenly assaulted. Several uniformed men appeared and dragged the applicant towards a van, still hitting him. She asked taxi drivers who were standing there for help and they informed IPTF of the incident.

33. The following day, possibly around 4 p.m., the applicant's mother saw the applicant again. His face was bruised and swollen and his nose deformed. The applicant went immediately to the hospital.

34. Since then the applicant, who used to be a very cheerful and communicative person, is depressive and aggressive. He is under constant medical observation, is treated with psychopharmaceutical drugs and was even hospitalised for psychiatric treatment.

2. Ms. Svjetlana Pržulj

35. Ms. Svjetlana Pržulj is the applicant's sister. She stated that on 26 January 1997 she and her mother were waiting in the car at about 100 to 150 meters from the IEBL at Vraca. The applicant was standing exactly on the separation line, waiting for the lawyer from Sarajevo they had an appointment with. The applicant was approached by a man in civilian clothes. After a brief conversation, this man hit the applicant to the ground. Four or five police officers, some in uniform, others in civilian clothes, emerged from a van to which they dragged the applicant and drove away. She asked a taxi driver who was standing there for help and he informed IPTF of the incident.

36. The following day, possibly around 4 p.m., the applicant returned accompanied by IPTF officers. His face was swollen and covered with haematoma, his nose and his stomach hurt. The applicant went immediately to the hospital from which he was released the same evening.

37. Since then the applicant is very depressive and incommunicative. He is still under medical

treatment.

3. Mr. Nermin Fazlagić

38. Mr. Nermin Fazlagić, a policeman of the Federation police, stated that on 26 January 1997 he was on duty in civilian clothes at the IEBL at Vraca together with a colleague, Mr. Nedim Dizdarević. At the same time, uniformed Federation policemen with a police van were on duty in the same area.

39. According to Mr. Fazlagić, two or three days before the day of Mr. Pržulj's arrest, Federation police patrolling that area had halted two persons and asked them to produce their identity cards. The two persons escaped to the Republika Srpska, leaving their identity cards in the hands of the Federation police. One of the two was N., a man wanted for war crimes.

40. On 26 January 1997 the second person, later on identified as Z.R., approached the uniformed policemen patrolling at Vraca and asked for the identification documents he had left in their hands two or three days before. In the meantime, Mr. Fazlagić had grown suspicious about the applicant, who was standing without any apparent purpose at about 50 to 80 meters distance. Suspecting that the applicant might be N., Mr. Fazlagić, closely followed by his colleague Mr. Dizdarević, approached him and asked him to identify himself. The applicant first stated that his identity documents were in the car and then pushed Mr. Fazlagić and tried to escape into Republika Srpska territory. Mr. Fazlagić, however, managed to get hold of the applicant. A brief scuffle ensued, at the end of which the two Federation policemen in civilian clothes, assisted by their uniformed colleagues, managed to subdue and handcuff the applicant. The applicant was slightly injured in the process and was bleeding from his nose.

41. Only after the struggle the Federation policemen noted that the applicant was armed with a pistol and disarmed him. Being handcuffed, the applicant indicated to the Federation policemen his pocket containing the documents identifying him as a Republika Srpska policeman authorised to carry a weapon. Via radio Mr. Fazlagić communicated the applicant's name to the Novo Sarajevo police station, and was informed that the applicant was wanted on charges of war crimes. From then on the applicant was detained on account of the investigation against him.

42. The applicant was taken to the Novo Sarajevo police station in the police van. Z.R. was asked to come in the van to the police station, too, as a witness of the incident and in order to be given back his identity papers. According to Mr. Fazlagić, six persons rode in the van: two uniformed policemen in the front and the two policemen in civilian clothes, the applicant and Z.R. in the back. No further incidents occurred during the transport and at the Novo Sarajevo police station the applicant, having been allowed to wash his bloody face, was handed over to officers of the criminal investigation police.

43. During the public hearing, Mr. Fazlagić was asked to explain certain contradictions between his testimony and the report he drafted after the arrest on 26 January 1997, which does not mention the applicant's injury and identifies Z.R. as a second person arrested together with the applicant (see paragraph 52 below). Mr. Fazlagić confirmed the correctness of his oral testimony and indicated his lack of experience and the shock suffered due to the arrest as probable causes of the inaccuracies in his written report.

4. Mr. Obren Šehovac

44. Mr. Obren Šehovac is a policeman of the Republika Srpska police. Around 1 p.m. on 26 January 1997 he was informed by a taxi driver of the arrest of his colleague, the applicant. He immediately informed the IPTF station at Kula, Srpsko Sarajevo, of the incident.

5. Dr. Milan Pejić

45. Dr. Milan Pejić is an otolaryngologist working at the Kasindol Hospital. He explained that he could not remember visiting the applicant, but recognised the medical certificate produced by the applicant as issued by him (see paragraph 60 below). Accordingly, he confirmed having visited the

applicant on 28 January 1997 and having found a fracture of the nose and a haematoma on the nasal partition. He also explained that it was not uncommon for nose fractures not to be visible on X-rays.

6. Dr. Slavko Ždrale

46. Dr. Slavko Ždrale is a surgeon and director of the Kasindol Hospital, specialised in chest surgery. He recalled the visit by the applicant, with whom he was previously acquainted, and recognised the medical certificate produced by the applicant as issued by him (see paragraph 61 below). Accordingly, he confirmed having visited the applicant on 28 January 1997 and having found injuries of the cartilagious part of the fourth and fifth rib. He explained that such injuries do not appear on X-rays.

7. Dr. Zoran Kezunović

47. Dr. Zoran Kezunović is a psychiatrist exercising his profession at the Psychiatric Hospital in Sokolac. He recalled having visited the applicant on 7 February 1997 and recognised the psychiatric finding produced by the applicant as issued by him (see paragraph 63 below). He confirmed 7 February 1997 was the only time he visited the applicant.

8. Dr. Slobodan Đokić

48. Dr. Slobodan Đokić is a psychiatrist exercising his profession at the Psychiatric Hospital in Sokolac. He stated that he treated the applicant from October 1998 to May 1999 as a hospitalised patient.

49. According to Dr. Đokić, the applicant suffered from a psycho-neurotic disease which resulted in depression, fear and frequent changes of mood. Such psycho-neurotic diseases are normally the result of a serious psychological trauma suffered by the patient. Dr. Đokić said that he could not state with certainty that the incident of 26 and 27 January 1997 was the traumatic event leading to the applicant's neurosis. He also stated that persons suffering from psycho-neurotic diseases as the applicant's were very likely to relapse as a consequence of stressful events, even of minor intensity.

E. Written evidence

50. The following documents have been either transmitted to the Chamber with the Ombudsperson's file or produced by the Parties at various stages of the proceedings before the Chamber.

1. Documents relating to the applicant's arrest and detention

51. The applicant has produced a power of attorney, dated 25 January 1997, by which he authorised S.H., lawyer practising in Sarajevo, to act on his behalf in the conclusion of the sale of his house in Sarajevo.

52. The Chamber has received the report of the arrest of the applicant, dated 26 January 1997 and signed by policemen Dizdarević and Fazlagić of the Novo Sarajevo police station. According to this report, on 26 January 1997, while performing their regular patrol duty in Derviša Numica street, the two policemen saw a person that three days before had run away while the police asked him to identify himself. The two policemen now found out that this person was Z.R., a merchant from Montenegro. In his company they found another person. Asked for his identity card, this man first told the policemen that he had left it in his car and then tried to escape across the IEBL towards Republika Srpska by pushing policeman Fazlagić. The policemen managed to stop the man, who was then identified as the applicant, who was wanted by the Federation authorities on the basis of a genocide charge pending against him. A pistol was found on the applicant. The applicant and Z.R. were taken to the Novo Sarajevo police station.

53. The Chamber has also received the IPTF file relating to the arrest and detention of the

applicant. According to a first report dated 26 January 1997, at about 12.45 p.m. the police station Novo Sarajevo informed IPTF that they had arrested "two Serbian men". The report summarises the facts that led to the applicant's and Z.R.'s arrest along the lines of the report by the Federation policemen (paragraph 52 above). It also relates that an IPTF patrol rushed to Vraca, where it found a gathering of people from the Republika Srpska side, among them policemen from the Lukavica police station, upset about the incident.

54. An internal telefax of IPTF dated 27 January 1997 contains the following additional information: On 27 January 1997, at about 9.30 a.m., the applicant was visited at the Sarajevo Central Prison by two IPTF officers. On that occasion the applicant assured the IPTF officers that he had not been maltreated by the Federation police.

55. According to a further entry in the IPTF file, on 27 January 1997 at 2.15 p.m. the IPTF Regional Commander, "after talking to all political parties involved in the arrest of Serbian Police officer", was advised that the applicant would be released within an hour. At approximately 3.30 p.m. the IPTF Regional Headquarters were informed that the applicant was ready to be released. Immediately two IPTF officers went to the Sarajevo Central Prison, took custody of the applicant and transported him back to his police station in Srpsko Sarajevo.

56. The respondent Party submitted to the Chamber the decision by the then Sarajevo High Court (now Cantonal Court), dated 27 January 1997, to terminate the investigation against the applicant on the ground that, at that moment, the evidence against him was insufficient to pass the scrutiny of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") in accordance with the "Rules of the Road" (see below paragraphs 73 and following). This decision makes reference to a decision to open an investigation against the applicant on charges of genocide and war crimes issued by the Sarajevo High Court on 7 January 1994. The decision of 27 January 1997 also mentions that the Sarajevo Prosecutor's Office would continue to gather evidence against the applicant in order to submit an indictment against the applicant to the ICTY at a later stage.

57. The Chamber requested from the respondent Party the submission of the decision to open an investigation against the applicant of 7 January 1994. The respondent Party submitted a letter from the Sarajevo Cantonal Prosecutor, addressed to the Agent of the respondent Party. According to this letter, a decision to open an investigation was taken and an arrest warrant issued against the applicant on charges of genocide and war crimes, but the relevant documents are confidential and can therefore not be produced.

58. The Chamber also requested from the respondent Party the police report concerning the escape of Z.R. on 23 January 1997. The respondent Party failed to produce the requested document.

2. Documents relating to the injuries sustained by the applicant and to his health since the incident

59. According to the specialist finding of the otolaryngologist Dr. Pejić dated 28 January 1997, the applicant had a broken nose and haematoma on both sides of the nasal partition, as well as a tumefaction and a smaller haematom below the right eye. The fracture of the nose was diagnosed on the basis of the obvious turgescence and deformation and of the pathology in the motion of the nose. The therapy consisted in the draining of the haematoma, the application of a tampon and the prescription of antibiotic drugs.

60. Upon the Chamber's request, the applicant produced a radiological profile of his skull, carried out on 28 January 1997.

61. According to the specialist finding of Dr. Ždrale, dated 28 January 1997, the applicant felt pain when breathing. Dr. Ždrale diagnosed a contusio hemithoracis on the right side and fractures of the cartilaginis of the fourth and fifth rib. He prescribed a drug and exercises. On 30 January and 8 February 1997 the applicant saw Dr. Ždrale for check-up visits. On the latter date Dr. Ždrale noted that the applicant's condition was better and recommended a further check ten days later, which appears not to have taken place.

62. The Ombudsperson submitted to the Chamber a report by two lawyers of her office who, on

21 July 1997, visited the Kasindol Hospital in order to verify the allegations made by the applicant. They met Dr. Ždrale, who remembered examining the applicant. The applicant felt pain breathing and Dr. Ždrale also noticed bruises on the applicant's face and advised him to see an otolaryngologist. The two lawyers of the Ombudsperson's Office checked the admission book of the otolaryngology department and found an entry matching the specialist finding submitted by the applicant. The admission book of the radiology department confirmed that a radiological exam of the applicant's nose and chest had been carried out on 28 January 1997.

63. According to the finding issued by the psychiatrist Dr. Kezunović, dated 7 February 1997, the applicant was suffering from hallucinations, depressive mood and restlessness. Dr. Kezunović prescribed psychofarmaceutical drugs.

64. The following medical documents were submitted by the applicant after the public hearing, upon request of the Chamber.

65. On 23 October 1998 a doctor in Vojkovići, having diagnosed a psychosis reactiva, referred the applicant to a neuropsychitrical specialist.

66. On 29 October 1998 Dr. Đokić examined the applicant. He found the applicant's condition "subjectively without significant changes. Continued feelings of fear, nervousness, occasional hallucinations. Objectively: pycho-motions slow, essential spirits low" and diagnosed a psychosis reactiva which rendered treatment in hospital necessary.

67. The discharge letter of the Psychiatric Hospital in Sokolac shows that the applicant was treated in the hospital from 3 November 1998 to 12 March 1999. The applicant's condition appears not to have changed substantially during the period of hospitalisation. Upon release, Dr. Đokić established that a psychologist's examination of the applicant was necessary and that the applicant could not work.

68. Dr. Đokić carried out control visits of the applicant on 16 April, 4 June, 3 August, 7 September and 5 October 1999. The applicant's condition appears to have been without substantial changes throughout this period. The psychiatrist found continued fear, insecurity, depressive mood, emotional instability and concluded that the applicant was not able to work.

69. The applicant has also produced a certificate issued by the Republika Srpska Ministry of Internal Affairs, Department for Material and Financial Affairs of the Center of Public Security in (Srpsko) Sarajevo. The certificate, dated 7 October 1999, states that the applicant, an employee of the Public Security Center in Ilidža, has been on sick leave as of September 1998 until the date of issuance "as a consequence of the grievous bodily injuries he sustained when arrested on 26 January 1997 by the Federation Police in Vraca". The certificate furthermore states that the applicant has been paid a reduced income, the overall loss in income amounting to 1,524 Convertible Marks (*Konvertiblnih Maraka*; "KM").

3. Newspaper articles produced in support of the applicant's claim that his reputation was ruined

70. The first newspaper article produced by the applicant was published in the Sarajevo newspaper *Oslobođenje* on 28 January 1997. It identifies the applicant by name, date of birth and profession and reports that he was arrested and detained on charges of genocide and war crimes. On the basis of the copy handed in by the applicant it cannot be established whether the article also informed that the applicant had subsequently been released.

71. Another article produced by the applicant, entitled "Pržulj walked all around Sarajevo", was published in the Sarajevo newspaper *Večernje Novine* on 29 January 1997. According to this article, on 26 January 1997 at 8.30 p.m. the applicant and a friend took a taxi from the Federation part of Sarajevo to Vraca, where the taxi was stopped by the Federation police and the applicant was arrested on charges of genocide and war crimes. The journalist reports that the judicial authorities had to release the applicant because they had not obtained the authorisation to arrest and prosecute him from the ICTY. The article, however, clearly implies that the applicant probably was a dangerous

criminal.

72. The third article produced by the applicant, entitled "Taxi drivers for trap shooting", was published in the newspaper *AS* (the date of publication cannot be gleaned from the copy of the article submitted). It links the applicant with a crime ring trafficking stolen cars and killing Sarajevo taxi drivers. The journalist calls the applicant a "top-dog dealer".

F. Relevant legislation

1. The Rome Agreement of 18 February 1996, Agreed Measures ("The Rules of the Road")

73. On 18 February 1996, the signatories to the General Framework Agreement for Peace in Bosnia and Herzegovina, meeting in Rome, agreed on certain measures to strengthen and advance the peace process. The second paragraph of item 5, entitled "Cooperation on War Crimes and Respect for Human Rights", reads as follows:

> "Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal. Procedures will be developed for expeditious decision by the Tribunal and will be effective immediately upon such action."

74. The expressions "International Tribunal" and "Tribunal" refer to the International Criminal Tribunal for the Former Yugoslavia, which has its seat in The Hague. The above-quoted provision is normally referred to as the "Rules of the Road".

75. At the public hearing before the Chamber in the cases no. CH/96/21 *Čegar*, no. CH/97/41 *Marčeta* and no. CH/97/45 *Hermas*, the Agent of the Federation stated, in relation to the legal status of the Rome Agreement, as follows (see case no. CH/97/45 *Hermas*, decision on admissibility and merits of 16 January 1998, paragraph 18, Decisions and Reports 1998):

> "Legally the Rome Agreement, The Rules of the Road, dated 18 February 1996, for the Federation of Bosnia and Herzegovina, has an obligatory character. The Federal Ministry of Justice in Sarajevo has delivered the text of this Agreement promptly on time to all courts within the Federation of Bosnia and Herzegovina in order to comply with it. The courts within the Federation were informed on time of its content and it is in force and legally binding because the Parties who signed the Agreement of 18 February 1996 in Rome agreed about the procedure and instructions to the Parties in the event of prosecution for war crimes against the civilian population and other crimes against humanity under international law."

2. The Law on Criminal Procedure

76. The Law on Criminal Procedure in force at the time of the alleged violations (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" – nos. 26/86, 74/87, 57/89 and 3/90 and Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – nos. 2/92, 9/92, 16/92 and 13/94) was substituted in the Federation of Bosnia and Herzegovina by the new Law on Criminal Procedure (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98) which entered into force on 28 November 1998. The following provisions, quoted from the old law, were overtaken without substantive changes.

(a) Provisions granting the victim of a crime a right to take part in prosecutorial activity

77. Article 149 of the old law provides that private citizens should report crimes which are prosecuted *ex officio* in order to ensure social self-protection.

78. Article 60 of the old law provided as follows:

"(1) When the public prosecutor finds that there are no grounds to undertake the prosecution of a crime which is prosecuted *ex officio*, he must inform the injured party of this within a period of 8 days and inform him that he or she may undertake the prosecution him- or herself. The same procedure shall be followed by a court if it has rendered a decision to halt proceedings because the public prosecutor has withdrawn from prosecution.

(2) The injured party has the right to undertake or to resume prosecution within 8 days from the date of receipt of the notification referred to in paragraph 1 of this Article.

(3) If the public prosecutor has withdrawn the bill of indictment, in undertaking prosecution the injured party may abide by the bill of indictment already preferred or file a new one.

(4) An injured party who has not been informed that the public prosecutor did not undertake prosecution or withdrew from prosecution may make his statement that proceedings be resumed before the competent court within 3 months from the date when the public prosecutor rejected the charge or from the date when the decision to halt proceedings was rendered.

(5) When the public prosecutor or court informs the injured party that he may undertake prosecution, he shall also be delivered instructions as to which steps he may undertake in order to exercise that right."

(b) Compensation claim against perpetrator of crime raised within the criminal proceedings

79. Paragraph 1 of Article 104 of the old law (Article 97 of the new law) reads as follows:

"(1) The motion to realize a claim under property law in criminal proceedings may be filed by the person entitled to pursue that claim in civil suit."

80. Paragraph 1 of Article 105 of the old law (Article 98 of the new law) reads as follows:

"(1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the body or agency to whom the criminal charge is submitted or to the court before which proceedings are being conducted."

(c) Compensation for unlawful detention

81. Articles 542 paragraph 2, 543 paragraph 1 and 545 paragraph 3 of the old law provided as follows (similar provisions are contained in Articles 524, 525 and 527 of the new law):

Article 542 paragraph 2:

"Before submitting a claim for compensation for damages to the court, the person concerned is obliged to address his request to the Administration authority of the Republic which is competent for the legal matters [now the Federal Ministry of Justice]."

Article 543 paragraph 1:

"If a claim for compensation for damages is not accepted or no decision by the authority organ has been taken on it within three months since the date of laying it, the person concerned may submit a complaint to a competent court for compensation for damages. If an agreement has been made in respect to a part of the claim, the damaged person concerned may submit a complaint regarding the remainder of the claim."

Article 545 paragraph 3:

"The right to compensation for damage belongs also to a person who is, because of a mistake or the illegal act of an organ, deprived of his or her freedom or kept for a longer period of time under custody or in prison than would otherwise have been the case."

82. Article 527 paragraph 2 of the new law reads:

"A person who under Article 187 of this law has been arrested without legal grounds shall be entitled to compensation for damage if custody was not pronounced against him ..."

Article 187 of the new law states the rights of persons arrested and detained on the ground of the suspicion that they have committed an offence.

3. Decisions of the Supreme Court of the former SFR Yugoslavia concerning compensation for non-pecuniary damages suffered in detention

83. The following two statements of the Supreme Court of the former SFR Yugoslavia concern the scope of the right to compensation for damages suffered in the course of unlawful detention:

"The Court is obliged to examine whether the illness of the applicant, which admittedly occurred after the detention, had been entirely or partially caused by his detention, and if so, whether it caused certain property loss. The illness, i.e. deterioration of his health, may also constitute a kind of non-pecuniary damage, for which he is also entitled to compensation." (decision no. Kž-24/69, Collection of Courts' Decisions concerning application of the Laws on Criminal Procedure, publication of the University of Sarajevo, 1996, p. 308).

"When no pecuniary damage was caused by illegal detention, on account of illness stemming from being in detention, this illness or deterioration of health may represent an aspect of non-pecuniary damage to the compensation of which the damaged person is entitled under Article 541 of the Law on Criminal Procedure [establishing the right to compensation for detention on account of a conviction subsequently annulled]." (decision no. Kž-36/70, Collection of Courts' Decisions concerning application of the Laws on Criminal Procedure, publication of the University of Sarajevo, 1996, p. 310).

4. The Law on Obligations

84. Articles 195 and 200 of the Law on Obligations (OG SFRY nos. 29/78, 39/85 and 45/89 and OG RBiH nos. 2/92, 13/93 and 13/94) provide for the possibility to claim in civil proceedings pecuniary and non-pecuniary damages suffered in case of bodily injury or impairment of health.

85. Article 195 reads as follows:

"(1) Who inflicts a bodily injury or impairs someone's health is under obligation to reimburse the medical expenses to that person and other necessary costs and expenses in this regard as well as the income lost because of that person's inability to work during the time of his or her medical treatment.

(2) If the injured person due to his or her complete or partial inability to work loses income, or his necessities increase permanently, or the possibilities of his or her further development or advancement are ruined or reduced, the responsible person is under obligation to pay to the injured person a fixed annuity as compensation for that damage."

86. Article 200 reads as follows:

"(1) For sustained physical pains, for mental suffering because of reduced quality of life, disfigurement, damaged reputation, honour, freedom or rights of personality, death of a close person as well as fear, the court shall, if it finds that the circumstances of the case, especially the strength of pains and fear and their duration justify it, award a fair pecuniary

compensation, regardless of the compensation for physical damages as well as in its absence.

(2) When deciding upon a compensation claim for non-pecuniary damages as well as the amount thereof, the court shall take into account the importance of the damaged asset and the purpose the compensation is aimed at, but also that it does not favour the aspirations incompatible with its nature and social purpose."

V. COMPLAINTS

87. In his application to the Ombudsperson, the applicant complained that during his arrest he was subjected to ill-treatment in violation of his rights under Article 3 of the Convention. He also complained that he was unlawfully detained in violation of his rights under Article 5 of the Convention. The applicant furthermore complained that his arrest by the Federal police constituted a violation of his right to freedom of movement guaranteed by Article 2 of Protocol No. 4 to the Convention, and of his right to a fair trial protected by Article 6 of the Convention, as he did not receive the decision on his arrest. The applicant finally complained that he was discriminated against in the enjoyment of these rights on the ground of his Serb nationality.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the admissibility

88. The respondent Party argues that the application should be declared inadmissible on the ground that the applicant has failed to use any of the remedies the domestic legal system provides. It makes reference to the claim for compensation to which, pursuant to the Law on Criminal Proceedings (see paragraphs 81-82 above), everyone who was detained and subsequently not found guilty can have recourse. The respondent Party further refers to the possibility to initiate court proceedings for damages suffered due to the ill-treatment inflicted by organs of the respondent Party. It finally stresses that these remedies have proved effective in the legal system of the Federation.

2. As to the merits

89. As to the merits, the Federation denies that any issue arises under Article 3 of the Convention, as it disputes that the applicant was ill-treated.

90. With regard to the applicant's arrest and detention, the respondent Party submits that the applicant was deprived of his freedom for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed acts of genocide and war crimes, in accordance with the applicable national law and Article 5 paragraph 1(c) of the Convention. The respondent Party further submits that the applicant was promptly informed of the reasons for his arrest.

91. In relation to the applicant's complaint under Article 6 of the Convention, the respondent Party again argues that the applicant was promptly informed of the charges against him, and that, in any case, the competent court terminated the investigation against the applicant after a very brief period of detention.

92. Regarding the alleged violation of Article 2 of Protocol No. 4 to the Convention, the respondent Party claims that "no act of the respondent Party challenged the freedom of movement as such, which is a category utterly independent from the 'physical freedom of a person' protected by Article 5 of the Convention".

93. As for the alleged discrimination against the applicant, the respondent Party argues that the applicant's complaint is completely unsubstantiated.

B. The applicant

1. As to the admissibility

94. The applicant does not dispute that the applicable laws of the Federation establish the remedies for maltreatment at the hands of police officers and unlawful detention referred to by the respondent Party. He submits, however, that, in consideration of his experience with the Federation authorities, he has a reasonable lack of confidence in those authorities and cannot be expected to claim compensation from them. He appears to argue that for this reason the remedies were not accessible to him.

2. As to the merits

95. The applicant maintains his complaints.

C. The Ombudsperson

1. As to the admissibility

96. The Ombudsperson, who referred the case to the Chamber (see paragraph 6 above), submits that the application is inadmissible because the applicant has not exhausted domestic remedies, as required by Article VIII(2)(a) of the Agreement. In fact, she states, the applicant did not pursue any domestic remedy.

(a) Admissibility of the complaint under Article 3 of the Convention

97. The Ombudsperson submits that, "where the applicant alleges ill-treatment at the hands of the police, criminal proceedings against the perpetrators and/or a claim for compensation might be considered effective remedies". The Ombudsperson points out the possibility to submit to the public prosecutor a criminal report against the perpetrators of the violation, and to raise a claim for compensation of pecuniary and non-pecuniary damages in criminal proceedings. In the alternative, she submits that the applicant could have sought compensation of pecuniary and non-pecuniary damages through a civil action against the perpetrators.

98. As to the alleged inaccessibility or inefficiency of the remedies provided by law, the Ombudsperson recalls that the rule of exhaustion of domestic remedies is inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective. The Ombudsperson submits that the applicant has not shown the existence of such a practice.

99. Regarding the applicant's reluctance to enter Federation territory in order to pursue remedies before the courts, the Ombudsperson submits that even if his fears were to be considered legitimate in view of the heavy injuries he allegedly sustained there in January 1997, nothing prevented him from engaging a lawyer for this purpose. In this respect the Ombudsperson further maintains that the exhaustion of domestic remedies may take place after the introduction of the application and that, as a consequence, the applicant cannot justify his failure to pursue domestic remedies by referring to the general circumstances prevailing in 1997.

(b) Admissibility of the complaint under Article 5 of the Convention

100. As to the alleged violation of Article 5, the Ombudsperson submits that the remedy required is an action before a court leading to a legally binding award of compensation for arrest and detention in violation of Article 5. The Ombudsperson maintains that such a remedy exists in the legal system of the respondent Party, both presently and under the laws applicable at the time of the alleged violation. She submits that domestic legislation provides not only for compensation for pecuniary damages, but also for compensation for non-pecuniary damages suffered due to unlawful

arrest and detention.

101. Regarding the applicant's claim that the remedies provided by the respondent Party's legal system were not accessible to him, the Ombudsperson refers to her observations concerning the admissibility of the case under Article 3 of the Convention.

(c) Admissibility of the remaining complaints

102. With regard to the alleged violation of the applicant's freedom of movement, the Ombudsperson submits that, as the case falls within the sphere of application of Article 5 of the Convention, it is not necessary to examine it under Article 2 of Protocol No. 4 to the Convention, which protects against less intensive restrictions of personal liberty.

103. The Ombudsperson further submits that Article 6 of the Convention is inapplicable to the present case, since the charges against the applicant were dropped the morning after his arrest and the applicant was never put to trial.

104. As far as the alleged discrimination against the applicant is concerned, the Ombudsperson considers the complaint completely unsubstantiated with regard to the enjoyment of the rights guaranteed by Article 5, while she reserves her position regarding discrimination in the enjoyment of the right protected by Article 3.

105. In summary, the Ombudsperson considers the present case inadmissible in its entirety.

2. As to the merits

106. In case the Chamber finds the application admissible, the Ombudsperson maintains that the application raises issues under Articles 3 and 5 paragraph 1 of the Convention. As to Article 3, she recalls that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the respondent Party to provide a plausible explanation as to the origin of the injury.

107. As to the rights protected by Article 5 paragraph 1, the Ombudsperson submits that the reasons for the applicant's arrest and detention are not clear. Should he have been detained pursuant to the 1994 decision to open an investigation against him for genocide and war crimes, the detention would have been in violation of the Rules of the Road, and therefore not in accordance with the law and in violation of the Convention.

VII. OPINION OF THE CHAMBER

A. Admissibility

108. Before considering the merits of this case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. According to Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application which it considers manifestly ill-founded.

109. The Chamber recalls that in cases where the applicant was never actually put on trial, the question, under Article 6 of the Convention, whether the applicant had a "fair hearing ... by an independent and impartial tribunal" in the "determination of any criminal charge against him" does not arise (see case no. CH/97/41, *Marčeta*, decision on admissibility and merits of 3 April 1998, paragraph 46, Decisions and Reports 1998). Similarly, as the applicant was never put on trial, the question whether he was informed of the charges against him is relevant under Article 5 paragraph 2, dealing with the conditions to be met in depriving persons of their personal liberty, and not under Article 6 paragraph 3(a). The Chamber therefore finds that the applicant's complaints under Article 6 are manifestly ill-founded.

110. The Chamber notes that in the present case it is undisputed that the applicant has not pursued any domestic remedy. The question before the Chamber therefore is whether the remedies indicated by the respondent Party and the Ombudsperson could be considered insufficient or ineffective from the outset, or whether, in the circumstances of the case, the applicant was otherwise dispensed from having recourse to domestic remedies.

111. Given that the Agent of the respondent Party and the Ombudsperson very vigorously raised a preliminary objection of non-exhaustion, the Chamber will once more recall the statement of principle with regard to Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11 to the Convention) made by the European Court of Human Rights in the case of *Akdivar and Others v. Turkey* (judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV). The Court held in paragraphs 66-69 of that judgment:

> "66. Under Article 26 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness [...].
>
> Article 26 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used [...].
>
> 67. However, there is, as indicated above, no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the 'generally recognised rules of international law' there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal [...]. The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective [...].
>
> 68. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement [...]. One such reason may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of.
>
> 69. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 26 must be applied with some degree of flexibility and without excessive formalism [...]. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case [...]. This means amongst other things that it must 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 the personal circumstances of the applicants."

112. Regarding the exhaustion of domestic remedies for the alleged maltreatment, the Chamber also recalls that the European Court of Human Rights has held (Eur. Court HR, *Aydin v. Turkey* judgment of 25 September 1997, Reports of Judgments and Decisions 1997-VI, paragraph 103) that:

> "where an individual has an arguable claim that he or she has been tortured by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure".

113. Given the absolute nature of the prohibition enshrined in Article 3 of the Convention, the Chamber finds that this applies equally to forms of inhuman and degrading treatment short of torture (see the aforementioned *Hermas* decision, paragraph 109).

114. The Chamber recalls that in the course of the public hearing the applicant stated that at the Sarajevo Public Security Centre he told at least three policemen, Messrs. Safet Obhođaš, Sejfo Sejfić and Jozo Andžić, how he had been maltreated. Mr. Sejfić appears to have been a senior police officer at the Public Security Centre, while Mr. Andžić even was, according to the applicant, the Chief of Criminal Police of the Cantonal Ministry of Interior. The Chamber notes that the respondent Party did not dispute these allegations, neither in the course of the hearing, nor in the additional observations submitted on 29 October 1999, in which it disputed most of the applicant's statements and of the testimony rendered by the witnesses at the public hearing.

115. The fact that the applicant told these two senior police officers about his maltreatment at the hands of Federation policemen constitutes *de facto* a report to the competent authority. On the basis of this report (and of the visible signs of maltreatment on the applicant before them), it would have been their duty to open *ex officio* an investigation and to report the events to the Sarajevo Prosecutor's Office. Their failure to do so constitutes an instance of "national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents", a circumstance which, according to the above cited statement of principle by the European Court (see paragraph 111 above), can absolve the applicant from the requirement to exhaust domestic remedies.

116. The Chamber also recalls that in none of the cases of unlawful detention or inhuman or degrading treatment by Federation authorities it has decided up to date (the aforementioned *Marčeta* and *Hermas* cases; case no. CH/96/21, *Čegar*, decision on the merits of 20 February 1998, Decisions and Reports 1998; case no. CH/98/946, *H.R. and Momani*, decision on admissibility and merits of 6 October 1999, to be published), an investigation into the criminal responsibilities of the respondent Party's agents involved in the violation of the applicants' rights was carried out. Nor has the respondent Party mentioned any cases in which its judicial authorities prosecuted state agents on charges of serious misconduct towards detainees. In this respect the Chamber furthermore notes that the dates of release from unlawful detention of the applicants in the above-mentioned cases vary between 16 July 1996 and 12 August 1997. The applicant's detention squarely falls within the same period.

117. The Chamber finally notes that the decision by the then Sarajevo High Court terminating the investigation against the applicant expressly mentions that the Prosecutor's Office would continue to gather evidence against the applicant in order to submit an indictment against him to the ICTY at a later stage (see paragraph 56 above). The Chamber concludes that the Prosecutor's activity against the applicant was only formally closed, and that the applicant was in fact clearly told that if he ventured into Federation territory again he risked being arrested anew.

118. In the light of these circumstances obtaining at the time of the applicant's arrest and release, both general and specific to the applicant's case, the Chamber is not satisfied that the filing of a criminal report against the perpetrators constituted an effective remedy, "available in theory and in

practice at the relevant time, that is to say ... capable of providing redress in respect of the applicant's complaints and offer(ing) reasonable prospects of success" (see paragraph 68 of the *Akdivar and Others v. Turkey* judgment quoted in paragraph 111 above).

119. As regards the possibility to initiate civil proceedings against the perpetrators in order to obtain, in civil proceedings, compensation for the damages suffered, the Chamber does not consider this an adequate remedy in case of an alleged violation of Article 3. To sue private individuals for monetary compensation cannot be considered a remedy for violations of the applicant's right not to be subjected to inhuman or degrading treatment, where these individuals have acted in their capacity as public officials (see, *mutatis mutandis*, Eur. Court HR, *Pine Valley Developments Ltd and Others v. Ireland* judgment of 29 November 1991, Series A no. 222, p. 22, paragraph 48). The same applies to the possibility to raise a claim for monetary compensation within criminal proceedings, which moreover presupposes that there is a reasonable prospect of obtaining a conviction of those individuals for misconduct in their capacity as such officials.

120. As to the remedies available in case of unlawful arrest and detention, both the respondent Party and the Ombudsperson have made reference to the possibility to claim compensation under Article 545 of the old Law on Criminal Procedure (Article 527 of the new law).

121. As in relation to the possibility to initiate criminal proceedings against the perpetrators of the ill-treatment, the Chamber is not satisfied that, in the light of the circumstances prevailing at the time of the applicant's arrest and release (see paragraphs 115-117 above), a claim for compensation for the unlawful detention suffered would have constituted a remedy offering reasonable prospects of success. The respondent Party has not cited any case-law of any court in the Federation from which it would appear that the procedure provided for by Article 542 paragraph 2 had ever been successfully followed by any person in a position comparable to the applicant's.

122. Moreover, the Chamber notes that, in order to meet the standards of the Convention, the legal system must provide for the right to claim compensation for both pecuniary and non-pecuniary damages. The Chamber is not satisfied that the mechanism provided for in Articles 541-545 of the old Law on Criminal Procedure (or the analogous provisions of the new law) meets this criterion. It recalls that in the aforementioned *Hermas* case (paragraph 77) the Agent of the respondent Party stated that there was no provision for non-pecuniary damages. In the present case, the Ombudsperson submits that "irrelevant of the Agent's approach to this issue in the *Hermas* case, it is true that under both Laws at issue, an individual might successfully claim both pecuniary and non-pecuniary damage before the competent authority". In support of her submission, she quotes certain case-law of the Supreme Court of the former Yugoslavia (see paragraph 83 above).

123. The Chamber is of the view that the two statements of the Supreme Court of the former SFR Yugoslavia show that Articles 541-545 were interpreted so as to include compensation for a very specific and limited category of non-pecuniary damage, i.e. long-term deterioration of health that does not, however, directly result in any medical expenses or in a reduced income. The Chamber notes that the applicant, like many other persons who have been unlawfully detained, claims compensation also for different forms of non-pecuniary damage: for the fear and pain suffered in the course of the detention and for the harm allegedly suffered to his honour and reputation. Nothing in the quoted case-law of the Supreme Court of the former SFR Yugoslavia supports the view that the applicant could have obtained compensation for these alleged damages, nor has the respondent Party or the Ombudsperson quoted any case-law of the courts of the Federation that allows for compensation of these forms of non-pecuniary damage.

124. The Chamber therefore concludes that the remedy for the alleged violation of Article 5 indicated by the respondent Party and the Ombudsperson was neither sufficient in theory to redress the harm complained of, nor did the applicant in practice have reasonable prospects to pursue it successfully.

125. As no other remedies available to the applicant have been indicated, nor any other ground for declaring the case inadmissible established, the Chamber declares the application admissible, except for the complaint under Article 6 of the Convention.

B. Merits

126. 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.

127. Under Article II of the Agreement the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the appendix (including the Convention), where such a violation is alleged or appears to have been committed by the Parties, Cantons or Municipalities or any individual acting under the authority of such an official or organ.

1. Article II(2)(a) of the Agreement

(a) Article 5 of the Convention

(i) *Article 5 paragraph 1 – lawfulness of the applicant's arrest and detention*

128. The applicant complains that he was unlawfully arrested and detained in violation of Article 5 paragraph 1 of the Convention, which in the relevant part reads as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> …
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
> …"

129. The respondent Party submits that the applicant was arrested on the territory of the Federation because he failed to identify himself and attempted to escape from the policemen trying to establish his identity. According to the respondent Party, the applicant was subsequently, once his identity had been established, deprived of his freedom for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed acts of genocide and war crimes, in accordance with the applicable national law and Article 5 paragraph 1(c) of the Convention.

130. The applicant claims that his arrest was a planned action by the Federation police. He further submits that there could not be any reasonable suspicion of having committed genocide and war crimes against him, as after three years of investigation the Sarajevo Public Prosecutor had not been able to gather enough evidence against him to submit the indictment to the ICTY under the Rules of the Road (see paragraph 73 above). The applicant suggests that the "investigation" against him was based solely on the fact that he was a former member of the police forces of the Republic of Bosnia and Herzegovina who, at the outbreak of the war, had decided to join the police forces of the Republika Srpska.

131. On the basis of the evidence before it, the Chamber finds that on 26 January 1997, around 12.20 p.m., the applicant was arrested by Federation police forces, among them Messrs. Fazlagić and Dizdarević, in the vicinity of the IEBL at Vraca. The evidence gathered also indicates that the applicant's arrest was not accidental, but the result of a well-planned police action aimed at arresting a person charged with genocide and war crimes in an investigation opened by the Sarajevo Public Prosecutor. The role of Z.R. in the applicant's arrest, if any, remains unclear.

132. The respondent Party has failed to produce the request to open an investigation against the applicant and the arrest warrant on the basis of which he was arrested and detained. The Chamber finds the applicant's allegation credible, that the prosecutorial activity against him was based solely on the fact that he was a former member of the police forces of the Ministry of Interior of the

Republic of Bosnia of Herzegovina who had joined the Republika Srpska police.

133. Under the Rules of the Road, "persons ... may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal". Charges of genocide and war crimes concern exactly those "serious violations of international humanitarian law" to which the Rules of the Road refer.

134. As stated by the respondent Party at the public hearing held before the Plenary Chamber in the cases of *Čegar, Marčeta* and *Hermas*, the Rules of the Road contained in the Rome Agreement of 18 February 1996 applied as domestic law in the Federation. The Rules of the Road had been circulated to all the courts in the Federation, and the Sarajevo Public Prosecutor's office could not have been unaware of them.

135. The decision of 27 January 1997 terminating the investigation against the applicant (see paragraph 56 above) unequivocally proves that no order, warrant or indictment against the applicant had been previously submitted to the ICTY after the Rules of the Road entered into force on 18 February 1996, as required by these Rules. The applicant's arrest and detention were therefore not "lawful" as required by paragraph 1(c) of Article 5.

136. In the light of this finding, it is neither relevant to establish whether the applicant was arrested on Republika Srpska or Federation territory, nor whether the applicant's arrest was otherwise in accordance with the law of the Federation.

137. The Chamber concludes that there has been a violation of Article 5 paragraph 1.

(i) *Article 5 paragraph 2*

138. Paragraph 2 of Article 5 provides:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

139. The respondent Party argues that "it is not in dispute that the applicant was informed promptly of the reasons for his arrest".

140. The applicant states that in the police station Novo Sarajevo he saw – but did not receive – a charge against him, accusing him of genocide and war crimes under Articles 141 and 142 of the (then applicable) Criminal Code. The IPTF officers visiting the applicant at the Center for Public Security Services informed the applicant that he had been arrested because he was suspected of having committed war crimes. The applicant's lawyer maintains that the applicant was not informed of the reasons for his arrest in accordance with legal standards, as neither the procedural decision opening an investigation nor the arrest warrant was delivered to the applicant.

141. The Chamber finds that, in the course of his detention, the applicant somehow learned that he was detained on account of charges of genocide and war crimes. He was formally informed about the reasons for his arrest when he received the decision terminating the investigation against him. In view of the fact that the applicant was detained for only about 27 hours, that he was informally acquainted with the reasons for his detention and that the decision terminating the investigation was communicated to him before he was ever interrogated, the Chamber finds that the case does not reveal a violation of Article 5 paragraph 2.

(b) Article 3 of the Convention

142. The applicant claims to have suffered, during his arrest and transport to the Novo Sarajevo police station, ill-treatment incompatible with Article 3 of the Convention, which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

143. The Chamber notes that this complaint raises two issues: firstly, that of the causal

connection between the treatment which the applicant suffered during his arrest and transport and the injuries found by the doctors who examined him two days later; and, secondly and if necessary, the gravity of the treatment inflicted.

(i) *The causal connection between the treatment complained of and the injuries found*

144. The applicant states that, in the course of his arrest and on the way to the police station Novo Sarajevo, he was ill-treated by Federation policemen, among them Mr. Fazlagić and Mr. Dizdarević, and suffered injuries in the face and on the chest. During at least part of this maltreatment the applicant was handcuffed and did not offer any resistance to the police. The ill-treatment stopped when the applicant arrived at the Novo Sarajevo police station.

145. The respondent Party states that the use of force was necessary during the arrest of the applicant, while it disputes that he was ill-treated during transport to the Novo Sarajevo police station, submitting that the applicant's allegations on how he was maltreated in the police van are highly implausible. The respondent Party further disputes the medical evidence produced by the applicant.

146. The Chamber notes that where a person is taken into custody by police organs in good health and is, after release from that custody, found injured, the respondent Party bears the burden to provide a plausible explanation as to the causes of the injury, failing which an issue arises under Article 3 of the Convention (see Eur. Court HR, *Tomasi v. France* judgment of 27 August 1992, Series A no. 241, pp. 40-41, paragraphs 108-111).

147. On 28 January 1997, the day following his release from custody (and not in the afternoon of 27 January 1997, as stated by witnesses Milojka and Svjetlana Pržulj), the applicant was visited by Dr. Pejić and Dr. Ždrale at the Kasindol Hospital. The doctors established that the applicant had a broken nose, a haematoma on the nasal partition and injuries of the cartilaginous part of two ribs. He also felt pain breathing. These injuries did not require hospitalisation of the applicant, but the applicant came to the hospital for follow-up visits on 30 January and 8 February 1997. The Chamber sees no ground to doubt the accuracy of the findings of these two doctors, who have confirmed and explained their findings at the public hearing. The Chamber further notes that the medical records of the Kasindol Hospital were inspected by members of the Ombudsperson's office, who found everything to be in accordance with the applicant's submissions.

148. No one has claimed that the injuries found on the applicant on 28 January 1997 could have dated from a period prior to his arrest, or that he injured himself during the night between 27 and 28 January 1997. In order to prove that the applicant was only subjected to the force necessary to arrest him against his will, it would have been sufficient to subject him to a brief medical examination when at the Novo Sarajevo police station Mr. Fazlagić noted that the applicant was bleeding from his nose. However, the fact that the applicant was injured in the course of the arrest was not recorded by the police. This casts serious doubt on the respondent Party's argument that use of force was necessary during the arrest.

149. The Chamber therefore concludes that the applicant's injuries as assessed by Dr. Pejić and Dr. Ždrale are the consequence of the applicant's deliberate ill-treatment at the hands of the Federation policemen.

(ii) *The gravity of the treatment complained of*

150. The European Court of Human Rights has held that the treatment complained of must have attained a minimum level of severity if it is to fall within the scope of Article 3 (see the *Ireland v. The United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 65, paragraph 162).

151. The Chamber has previously held that any recourse to physical force against a person which has not been made strictly necessary by the person's own conduct diminishes human dignity and is, in principle, an infringement of Article 3 (see the aforementioned *Hermas* decision, paragraphs 28-29, with reference to the case-law of the European Court).

152. The Chamber notes the particular vulnerability of a person held in police custody. It also recalls that the applicant has stated that during at least part of his maltreatment he was handcuffed and could not protect himself against the police officers punching and kicking his face and his body. The Chamber therefore finds that the treatment inflicted to the applicant by the police amounted to inhuman and degrading treatment.

(iii) *Conclusion*

153. The Chamber concludes that the applicant was subjected to inhuman and degrading treatment in violation of Article 3 of the Convention.

(c) Article 2 of Protocol No. 4 to the Convention

154. In his application to the Ombudsperson the applicant complained that his arrest constituted a violation of his right to freedom of movement guaranteed by Article 2 of Protocol No. 4 to the Convention, which insofar as relevant reads as follows:

> "1. Everyone lawfully within the territory of a State shall, within the territory, have the right to liberty of movement and freedom to choose his residence.
>
> ...
>
> 3. No restriction shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

155. The Ombudsperson noted that the difference between Article 5 of the Convention and Article 2 of Protocol No. 4 to the Convention was in the degree or intensity of the right of freedom to move. Considering that Article 5 was applicable to the complaints raised by the applicant, the Ombudsperson did not consider that an examination of the case under Article 2 of Protocol No. 4 to the Convention was necessary.

156. The Chamber is of the same opinion and, in the light of its finding of a violation of Article 5 paragraph 1 of the Convention, concludes that it is not necessary to examine the application under Article 2 of Protocol No. 4 to the Convention.

2. Article II(2)(b) of the Agreement – complaint of discrimination

157. The applicant claimed that it is "obvious" that he was discriminated against on the basis of his nationality.

158. The respondent Party argues that the applicant did not explain how he was treated differently from others. The respondent Party further argues that neither did the applicant provide any evidence of the discrimination against him nor was such discrimination apparent from the case file.

159. As far as discrimination in the enjoyment of the right to liberty and security of person is concerned, the Ombudsperson submitted that the applicant was either arrested in execution of an arrest warrant or after failing to produce a proper identification document. She stated that the applicant was not treated differently from other persons in that situation and concluded that he could not therefore have been discriminated against in the enjoyment of his rights guaranteed by Article 5. The Ombudsperson reserved her opinion in relation to the complaint of discrimination insofar as it concerns the enjoyment of the right enshrined in Article 3.

160. Under Article II(2)(b) of the Agreement, the Chamber has jurisdiction to consider alleged or apparent discrimination on any ground in the enjoyment of any of the rights and freedoms provided for in the 16 international agreements listed in the Appendix to the Agreement.

161. The Chamber notes that it has already found violations of the rights of the applicant as protected by Articles 3 and 5 paragraph 1 of the Convention. It must now consider whether he has suffered discrimination in the enjoyment of those rights.

162. In examining whether there has been discrimination contrary to the Agreement the Chamber has consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations (see*, inter alia*, case no. CH/98/756, *Đ.M.*, decision on admissibility and merits of 13 April 1999, paragraph 72). 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.

(a) Discrimination in relation to Article 5 of the Convention

163. The applicant submits that the investigation against him was based solely on the fact that he is a former member of the police forces of the Ministry of Interior of the Republic of Bosnia and Herzegovina who, at the outbreak of the war, decided to join the police forces of the Republika Srpska. The Chamber recalls that the respondent Party was requested to submit the request to open an investigation against the applicant in order to shed some light on the elements that led to the charges against the applicant. The respondent Party did not produce the requested document.

164. The Chamber notes that, in general, a respondent Party's failure to produce a document capable of disproving an allegation by the applicant can lead to a finding accepting and endorsing the applicant's allegation. In the present case, however, the Chamber holds that the evidence before it is not sufficient to sustain a finding of discrimination against the applicant in the enjoyment of his right to liberty and security of person.

(b) Discrimination in relation to Article 3 of the Convention

165. The applicant claims that during his arrest, while he was assaulted, kicked and punched by the policemen, he was verbally abused with reference to his nationality. The respondent Party denies that the applicant was ill-treated at all.

166. The Chamber has already found that the applicant was subjected to degrading and inhuman treatment during his arrest and the transport in the police van. The Chamber notes, however, that several factors different from the applicant's nationality, such as the rancour caused by the extreme gravity of the crimes the applicant was charged with and the resistance he allegedly opposed to his arrest, can explain the misconduct of the policemen.

167. The Chamber is therefore not satisfied that the evidence before it is sufficient to sustain a finding of discrimination in the enjoyment of the applicant's right not to be subjected to inhuman or degrading treatment.

VIII. REMEDIES

168. Under Article XI(1)(b) of the Agreement the Chamber must address the question 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 (including pecuniary and non-pecuniary injuries) as well as provisional measures.

169. The Chamber notes that it has found that the applicant has suffered violations of his right not to be subjected to inhuman and degrading treatment and of his right to liberty and security of person. The Chamber has found that Messrs. Fazlagić and Dizdarević played a major role in the violation of the applicant's right not to be subjected to inhuman and degrading treatment.

170. In view of the fact that Messrs. Fazlagić and Dizdarević seriously violated the applicant's human rights, and thereby exceeded their authority and abused their position, the Chamber finds it appropriate that criminal proceedings should be initiated against them and the other policemen involved in the applicant's arrest. It considers that such acts, which not only adversely affected the applicant but also the police service of the Federation of Bosnia and Herzegovina and indeed the Federation as a whole, should not go unpunished.

171. The Chamber therefore considers it necessary to order the respondent Party to initiate, in accordance with its internal legal procedures, an investigation into the conduct of Messrs. Fazlagić and Dizdarević, as well as against the other policemen involved in the arrest, in relation to the arrest and detention of the applicant, with a view to initiating criminal proceedings against them in accordance with the law of the Federation of Bosnia and Herzegovina.

172. The Chamber will now turn to the question of monetary relief. On 7 August 1999 the applicant submitted a first compensation claim. He requested compensation for the fear and pain suffered, for the "reduced general ability", i.e. reduced working and general living ability, for the ruined reputation and honour and for medical expenses in the overall amount of KM 20,000.

173. In the course of the public hearing of 5 October 1999, the applicant put forward a new compensation claim, on which the Chamber will base its consideration of the issue of monetary relief for the violations found. The applicant claimed:

> (a) KM 10,000 for the damage done to his reputation and honour and additionally KM 5,000 on the ground that this damage was done through the media;
>
> (b) KM 8,000 for the pain and fear inflicted to him;
>
> (c) KM 5,000 for "the mental suffering of his mother and his sister who spent more than one day in fear for the life of their son and brother respectively";
>
> (d) KM 2,000 for the medical expenses which are not borne by his health insurance; and
>
> (e) KM 1,800 (i.e. KM 120 per month) for the reduced personal income due to the sick leave which he has allegedly been forced to take for 15 months as of the date of the hearing.

The overall compensation claimed at the public hearing is thereby KM 31,800.

174. The Chamber notes that the applicant has also lodged a request for compensation of the fees and expenses due to his representative for his participation in the proceedings before the Ombudsperson and the Chamber. According to the applicant's representative these amount to KM 640, of which KM 120 for the proceedings before the Ombudsperson.

175. In support of his claim for compensation of the damage done to his reputation and honour the applicant has produced three newspaper articles published in the days following his arrest. The Chamber notes that one of the articles (see paragraph 72 above) relates to facts completely different from those concerned by the present application. The Chamber further notes that on the basis of the copy of that article it is not possible to determine whether it was published in the days following the applicant's arrest.

176. The Chamber also notes that the article published in *Večernje Novine* (see above paragraph 71) expressly mentions that the charges against the applicant were dropped and the applicant released, while the copy of the article published in *Oslobođenje* (paragraph 70 above) is incomplete, so that the Chamber cannot establish whether it contained this information.

177. The Chamber finally notes that it cannot award compensation for the alleged television coverage of the applicant's arrest and the damage thereby possibly done to his reputation, as no evidence of this coverage was submitted to it.

178. In the light of these considerations, the Chamber takes the view that the present decision, finding that the applicant was unlawfully arrested and treated in violation of his right not to be subject to inhuman or degrading treatment, constitutes sufficient redress for the harm, if any, done to his honour and reputation. It will therefore not award any compensation under this item.

179. As far as the applicant's claim for compensation on account of "the fear and pain suffered" is concerned, the Chamber understands this claim to refer to the bodily and mental suffering during the arrest, the custody and the immediate aftermath of the custody, e.g. the pain the applicant felt breathing for several days after release. The Chamber notes the difficulties inherent in the determination of an adequate monetary compensation under this item. It also notes that the present decision in itself, taken after the proceedings before the Chamber, will in large part constitute recognition of the wrongs done to the applicant. Nevertheless, the Chamber considers it appropriate to award the applicant a monetary sum as compensation for the treatment he suffered. It considers an appropriate sum to be KM 3,000 and will accordingly order the Federation of Bosnia and Herzegovina to pay this sum to the applicant within three months from the day when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

180. With regard to the applicant's claim for compensation for the mental suffering of his mother and sister, the Chamber notes that it is competent only to award damages to the applicant and not to persons who are not parties of the proceedings before the Chamber.

181. The Chamber notes that the history of the applicant's psychological problems, of their cause and of their psychiatric treatment is unclear and lacunose. The applicant visited a psychiatrist, Dr. Kezunović, on 7 February 1997 and was hospitalised at the Psychiatric Clinic Sokolac on 3 November 1998. In between the two dates, the applicant was not assisted by a psychiatrist. Dr. Đokić, the psychiatrist treating the applicant during his hospitalisation, was not in a position to establish with certainty a causal link between the incident of 26 and 27 January 1997 and the psychological problems the applicant has been suffering from. On the other hand, it has not been alleged that the applicant suffered any other traumatic event between February 1997 and October 1998 that could serve as an alternative explanation of the *psychosis reactiva* consistently found by the doctors who have treated him since February 1997.

182. Moreover, the Chamber notes that while according to medical documentation - especially the applicant's "case history" signed by Dr. Đokić - the applicant suffers exclusively from neurological and psychological problems, the certificate issued by the applicant's employer on 7 October 1999 states that he has been on sick leave since September 1998 "as a consequence of the grievous bodily injuries he sustained when arrested on 26 January 1997 by the Federation Police in Vraca".

183. In view of the above, the Chamber concludes that it is at present not in a position to conclude or exclude that there is a causal link between the deterioration of the applicant's mental and psychological health and the violations of his human rights found in this decision. It cannot, therefore, rule within the present decision on the applicant's claim for compensation for the medical expenses after 7 February 1997 or for the reduced personal income due to the sick leave since September 1998 or on the claim for "reduced general ability" originally raised by the applicant (paragraph 172 above). The Chamber reserves its decision on these parts of the applicant's compensation claim until a later date.

184. As far as the claim for compensation for the expenses incurred due to the medical treatment between 28 January and 7 February 1997 is concerned, the Chamber has not received from the applicant any documents substantiating his claim and will, therefore, not award any compensation.

185. As for legal fees and expenses incurred in the present proceedings and in the proceedings before the Ombudsperson, the Chamber orders the respondent Party to pay compensation to the applicant, within three months from the day when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, in the amount of KM 640, a sum not questioned by the respondent Party.

186. Additionally the Chamber awards 4% (four per cent) interest as of the date of expiry of the three-month period set for the implementation of the present decision on the sums awarded in paragraphs 179 and 185 above.

IX. CONCLUSIONS

187. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible in relation to the complaints under Articles 3 and 5 of the European Convention on Human Rights, Article 2 of Protocol No. 4 to the Convention and of discrimination in the enjoyment of the rights guaranteed by these provisions;

2. unanimously, to declare inadmissible the applicant's complaint under Article 6 of the Convention;

3. unanimously, that the arrest and detention of the applicant by the police in Sarajevo on 26 and 27 January 1997 constituted a violation of the right of the applicant to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that the case does not reveal a violation of the applicant's right to be promptly informed of the reasons for his arrest and of any charges against him under Article 5 paragraph 2 of the Convention;

5. by 5 votes to 1, that the treatment to which the applicant was subjected by the police during his arrest and transport in the police van on 26 January 1997 constituted inhuman and degrading treatment and thus violated the applicant's rights under Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that it is not necessary to examine the complaint under Article 2 of Protocol No. 4 to the Convention;

7. by 5 votes to 1, that there is not sufficient evidence to conclude that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Article 5 of the Convention;

8. unanimously, that there is not sufficient evidence to conclude that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Article 3 of the Convention;

9. unanimously, to order the respondent Party to carry out an investigation into the conduct of Messrs. Fazlagić and Dizdarević, as well as of the other policemen involved in the applicant's arrest on 26 January 1997 at the Inter Entity Boundary Line at Vraca and in the applicant's transportation in the police van to the Novo Sarajevo police station, with a view to initiating criminal proceedings against them in accordance with the law of the Federation of Bosnia and Herzegovina;

10. by 5 votes to 1, to order the respondent Party to pay to the applicant, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 3,000 (three thousand) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for the fear and pain suffered during the arrest and detention, as well as in the immediate aftermath of the release;

11. by 4 votes to 2, to reserve its decision on the applicant's claim for compensation for the medical expenses after 7 February 1997, for the reduced personal income due to the sick leave since September 1998, and on the claim for "reduced general ability";

12. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, within three months from the day when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 640 (six hundred and forty) Convertible Marks

(*Konvertibilnih Maraka*) by way of compensation for the legal fees and expenses incurred in the proceedings before the Chamber and the Ombudsperson;

13. unanimously, that simple interest at an annual rate of 4% (four per cent) will be payable on the sums awarded in conclusions number 10 and 12 above from the expiry of the three-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

14. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel