DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 March 2000)

Case no. CH/98/866

Nataša CAJLAN

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 February 2000 with the following members present:

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

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

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

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

I. INTRODUCTION

1. The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina of Croat descent, to regain possession of an apartment in Banja Luka over which she, together with her husband, holds the occupancy right. She was evicted from it in 1995 by displaced persons of Serb origin. She has initiated judicial and administrative proceedings to regain possession of the apartment. In 1996 she was granted the occupancy right over a different, smaller, apartment by JP Telekom, which she still occupies. The relevant municipal authorities seek the eviction of the applicant from this second apartment.

2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 12 August 1998 and registered on the same day.

4. The applicant requested that the Chamber order the Republika Srpska as a provisional measure to take all necessary steps to prevent her eviction from the apartment she currently occupies, located at Sime Matavulja 10, Banja Luka. On 24 August 1998 the Chamber issued an order in these terms.

5. On 18 September 1998 the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits of the case. No such observations have been received. The Chamber also requested the applicant to submit certain further information relevant to her application, which she did on 24 September 1998.

6. On 20 November 1998 the applicant was requested to submit any claim for compensation or other relief she wished to make. These were received on 1 December 1998 and transmitted to the respondent Party on 8 December 1998. The respondent Party was requested to submit observations on the applicant's claim for compensation but did not do so.

7. On 13 March 1999 the Chamber considered the application and decided to request certain further factual information from the parties. The applicant's reply was received on 22 March 1999 and that of the respondent Party on 26 May 1999.

8. On 9 December 1999 and 7 February 2000 the Chamber considered the admissibility and merits of the application. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The applicant is a citizen of Bosnia and Herzegovina of Croat descent. The facts of the case as they appear from the applicant's submissions and the documents in the case-file have not been contested by the respondent Party and may be summarised as follows.

1. The first apartment

10. On 1 August 1973 the applicant's husband was allocated an apartment located at Relje Krilatice 7 in Banja Luka ("the first apartment") by the holder of the allocation right over it, JP Telekom, which was also his employer. On the same day he entered into a contract for the use of the apartment with the relevant housing company. Until 1994 the applicant lived in the apartment together with her husband, who is of Czech descent. He left for Germany in 1994. The applicant remained in Banja Luka, as she was undergoing treatment for a hip injury.

11. In August 1995 displaced persons of Serb origin from Glamoč entered into the apartment. The applicant states that she was unable to remain there as they threatened her and forced her to leave it. According to the applicant, they claimed that an official of the Republika Srpska had made a decision entitling them to enter the apartment. The applicant lived with friends in Banja Luka until she was allocated another apartment (see paragraph 17 below).

12. On 22 September 1997 the applicant initiated proceedings before the Court of First Instance ("*Osnovni Sud*") in Banja Luka against the occupants of the apartment, seeking to regain possession of it. These proceedings were registered at the court on 26 September 1997. The first hearing in the case was held on 24 September 1998. After this hearing, the court issued a procedural decision ordering the applicant to amend her complaint. The reason for this was that, as the applicant's husband was the registered holder of the occupancy right over the apartment, the proceedings should be brought by him. On 7 October 1998 the applicant submitted an amended complaint, naming herself and her husband as the plaintiffs and submitting a letter of authorisation from her husband for her to represent him in the proceedings. This was accepted by the court.

13. By a decision of 27 May 1999 the court rejected the applicant's complaint, finding itself incompetent to decide upon the matter as cases concerning return into possession of property were to be dealt with by the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission") established by Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

14. The applicant appealed against this decision to the Regional Court in Banja Luka. There has been no decision on this appeal to date.

15. On 16 August 1998 the applicant applied to the Secretariat for Housing Affairs in Banja Luka, requesting that the current occupants of the apartment be evicted. There has been no decision on this application to date. The applicant has not taken any legal steps against the failure of the Secretariat to decide upon her application.

16. In July 1999 the applicant applied to the Commission for the Accommodation of Refugees and Administration of Abandoned Property under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (see paragraphs 23-35 below) to regain possession of the apartment. No decision has been issued on this application to date. The applicant has not taken any legal steps against this failure.

2. The second apartment

17. On 12 December 1996 the applicant was allocated another apartment, located at Sime Matavulja 10 in Banja Luka, by JP Telekom. The applicant was unable to enter into a contract for the use of this apartment, as there is a dispute as to who is the holder of the allocation right over it.

18. On 31 July 1998 the Secretariat issued a decision declaring the applicant to be an illegal occupant of this apartment and ordering her to vacate it. The Secretariat stated that she had not been allocated the occupancy right over the apartment by the holder of that right and accordingly occupied the apartment illegally. The applicant at first refused to accept delivery of the decision. On 16 August 1998 the applicant appealed to the Ministry for Urbanism and Housing-Communal Affairs. On 25 September 1998 the Ministry refused her appeal on the ground that she had no standing to appeal against a decision which she had not received. The applicant subsequently accepted receipt of the decision of 31 July 1998.

19. On 22 September 1999 the primary school "Jovan Cvijić" initiated proceedings before the Court of First Instance in Banja Luka against JP Telekom, the applicant and another company. In these proceedings, the plaintiff claims that JP Telekom and the other company illegally entered into a contract for the sale of the apartment. The school claims that it, in fact, is the owner of the apartment. The applicant is named as a defendant as the plaintiff seeks her eviction from the apartment so that the school can gain possession of it. These proceedings are, according to the information available to the Chamber, still pending.

20. The applicant still occupies the second apartment and wishes to regain possession of the first apartment.

B. Relevant legislation

1. Constitution of the Republika Srpska

21. Article 121 of the Constitution of the Republika Srpska reads as follows:

> "The judicial function is performed by the courts. The courts are independent and decide upon the basis of the Constitution and laws.
>
> The courts protect human rights and freedoms, established rights and interests of legal entities and legality."

2. The Law on the Use of Abandoned Property

22. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96) regulated the use of property considered to be abandoned. To this end, it established Commissions for the Accommodation of Refugees and Administration of Abandoned Property. These Commissions were responsible for identifying property considered to be abandoned and allocating it to persons entitled under the law to occupy such property. It also sought to establish a mechanism for the return of abandoned property to its prewar owners or occupiers. This law was abrogated by the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (see paragraphs 23-35 below).

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

23. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; "the 1998 law"), as amended, establishes a detailed framework for persons to regain possession of property of which they have lost possession.

24. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

25. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as "temporary users") in order to allow the previous owner, possessor or user to return.

26. The relevant body of the Ministry for Refugees and Displaced Persons (i.e. the local Commission for the Accommodation of Refugees and Administration of Abandoned Property) shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the new law to be provided with alternative temporary accommodation. If it determines that this is the case, the Commission shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

27. Any failure of the Commission to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

28. Article 8 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Such claims may be filed with the

Commission. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

29. Article 9 states that the Commission shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

30. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Proceedings (see paragraphs 36-42 below) and treated as an expedited procedure.

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

32. Article 12 requires that the decision of the Commission be delivered to the current occupants of the property concerned. An appeal may be lodged against a decision within fifteen days of its receipt. However, the lodging of an appeal does not suspend the execution of the decision.

33. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Annex 7 Commission. In the event that an application by a claimant has been rejected by the responsible body (i.e. the local Commission) on either formal or material grounds, the proceedings before the Commission may be suspended pending the final decision of the Annex 7 Commission, if the Annex 7 Commission so requests. Any decision of the Annex 7 Commission shall be enforced by the authorities of the Republika Srpska.

34. Article 26 states that claims for repossession of property may also be filed by persons whose property was reallocated pursuant to, amongst others, Article 17 of the Law on the Use of Abandoned Property.

35. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 - 11 of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

4. The Law on General Administrative Proceedings

36. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It establishes a detailed regime for the conduct of administrative proceedings. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Proceedings. In all other cases, the Law on General Administrative Proceedings applies.

37. Article 5 of the law states that organs conducting an administrative procedure shall act in such a manner as to enable the parties to the proceedings to realise their rights in the most efficient way possible, having regard both to the public interest and to the interests of others affected.

38. Article 8 sets out the general principle that before making a decision, the deciding organ must give the parties the opportunity to express their opinion on all relevant facts and circumstances. According to Article 10, the deciding organ is to act and decide upon the matter independently.

39. The procedure envisaged by the law may be briefly summarised as follows. Once an organ is seised of a matter, it shall conduct that procedure in accordance with the law. The deciding organ may receive evidence both by written submission and at an oral hearing. Chapter VI of the law allows for the issuance of deadlines at various stages of the procedure, which are to be adhered to by the person or persons subject to them, in order to ensure that the proceedings are conducted expeditiously.

40. In accordance with Article 135 of the law, all facts necessary for the taking of a decision must be obtained by the deciding organ prior to the taking of such a decision. Article 149 allows for the holding of hearings, if it is desirable for the better resolution of the issue. In certain defined cases (e.g. where expert evidence is to be taken), a hearing must be held.

41. Under Article 202 of the law, the deciding organ shall issue its decision on the basis of the facts ascertained in the proceedings before it. Articles 206-214 of the law set out the requirements for the form and content of rulings.

42. The law also provides for, e.g., appeals against decisions and enforcement of decisions.

5. The Law on Housing Relations

43. The Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 14/74, as amended) governs the rights and obligations of owners of the allocation right over socially owned property and of persons to whom such property is allocated for use.

44. Article 19 states that only one person may be the holder of the occupancy right over an apartment. In the event that a married person living with his or her spouse concludes a contract for the use of a socially-owned apartment, his or her spouse is also considered to be the holder of the occupancy right. In such a situation, if one of the spouses dies or permanently ceases to occupy the apartment, the other spouse becomes the sole holder of the occupancy right, unless otherwise specified by the present law. The law sets out a special regime dealing with who is to remain the occupancy right holder over an apartment in the event of divorce.

IV. COMPLAINTS

45. The applicant claims that her inability to regain possession of the first apartment involves violations of her right to a fair hearing within a reasonable time, as guaranteed by Article 6 paragraph 1 of the Convention, and her right to respect for her home, as guaranteed by Article 8 of the Convention. She also claims that she has been discriminated against in the enjoyment of these rights in contravention of Article 14 of the Convention. The Chamber considers that the case might also raise an issue under Article 1 of Protocol No. 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

46. The respondent Party has not made any submissions on the admissibility and merits of the application. It did provide certain factual information to the Chamber (see paragraph 7 above).

47. The applicant maintains her complaint. She claims that the court proceedings she initiated are ineffective and that, accordingly, she is not required to exhaust other remedies available in the legal system of the Republika Srpska.

VI. OPINION OF THE CHAMBER

A. Admissibility

48. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

49. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. ...[M]oreover, ... in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

50. The Chamber notes that the applicant initiated proceedings before the Court of First Instance in Banja Luka, seeking to regain possession of the first apartment. However, these proceedings were rejected by the court and the applicant's appeal is currently pending before the Regional Court (see paragraphs 13-14 above).

51. The Chamber has previously noted that the Supreme Court of the Republika Srpska has held that matters concerning abandoned property are within the sole competence of the Ministry, finding that such issues should be decided by an administrative procedure rather than by the courts (see cases nos. CH/98/659 *et al.*, *Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraphs 151–152, Decisions August-December 1999). Accordingly, having recourse to the courts does not appear to be a remedy at all.

52. The Chamber notes that the applicant has applied under the 1998 law to regain possession of the first apartment. She has not received a decision within the prescribed time-limit (see paragraph 16 above). The applicant has not taken any steps provided for by the law of the Republika Srpska, by way of administrative proceedings, against the failure of the authorities to decide upon her request to regain possession of the first apartment.

53. As the Chamber noted in its decision in *Eraković* (case no. CH/97/42, decision on admissibility and merits delivered on 15 January 1999, paragraph 40, Decisions January-July 1999) a remedy such as that provided for by the law applicable in the Federation of Bosnia and Herzegovina, analogous to the 1998 law in the Republika Srpska, could in principle qualify as an effective one. The Chamber finds that its analysis in that case applies equally to the 1998 law relevant to the present case.

54. In the *Eraković* case, the Chamber considered the factual background to the case in the context of its admissibility. It held that the circumstances of that case, including the failure to adhere to the relevant time-limits, meant that the applicant could not be required to exhaust any further remedy provided for by national law.

55. In the present case the Chamber notes that the applicant was forcibly and illegally evicted from the first apartment in 1995. She initiated court proceedings to regain possession of it in 1997. She could also have sought to regain possession under the Law on the Use of Abandoned Property (see paragraph 22 above), which was in force at that time. However, as the Chamber has previously held, that law was "ineffective and illusory in practice" (see *Pletilić and others*, sup. cit., paragraph 127).

56. Therefore, the applicant did not have any effective remedy available to her before the adoption of the 1998 law. The Chamber does not consider that the applicant should now be required to initiate administrative proceedings, which may not prove to be effective, against the failure of the authorities to decide upon her claim for repossession of the first apartment.

57. The Chamber finds, in the circumstances, that the requirements of Article VIII(2)(a) of the Agreement have been met.

58. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

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

1. Article 6 of the Convention

60. The applicant complains of a violation of her right to a fair hearing within a reasonable time, as guaranteed by Article 6 paragraph 1 of the Convention. This provision reads as follows:

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

61. The Chamber recalls that it has previously held that a dispute concerning an apartment over which a person holds an occupancy right falls within the ambit of Article 6 paragraph 1 of the Convention (see, e.g., case no. CH/97/93*, Matić,* decision on admissibility and merits delivered on 11 June 1999, paragraph 80, Decisions January-July 1999).

62. The Chamber notes that the applicant initiated proceedings before the Court of First Instance in Banja Luka on 22 September 1997, seeking to regain possession of the first apartment. On 27 May 1999 the court declared itself incompetent to deal with the matter. It held that the matter should be dealt with by the Annex 7 Commission (see paragraph 13 above). The applicant's appeal against this decision is still pending before the Regional Court.

63. The Chamber notes that Article 121 of the Republika Srpska Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 21 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. The Chamber has previously found that, in the absence of a specific statement to that effect, the Law on the Use of Abandoned Property did not remove court jurisdiction over property that was considered to be abandoned (see *Pletilić and others,* sup. cit., paragraph 194). The Chamber considers that the same applies to the 1998 law, as it lacks a specific statement that the courts are incompetent to deal with such matters. Article 13 of the 1998 law allows for proceedings for the return of property before a Commission to be suspended in certain defined circumstances (see paragraph 33 above). It does not provide for the suspension of such proceedings before the courts in any circumstances.

64. Nevertheless, the practical effect of the standpoint of the courts in the Republika Srpska is that it is impossible for the applicant to have the merits of her civil action against the current occupants of the first apartment determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, there has been a violation of her right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

2. Article 8 of the Convention

65. The applicant also alleges a violation of her right to respect for her home, as protected by Article 8 of the Convention. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

66. The Chamber notes that the applicant lived in the first apartment without interruption from 1973 until August 1995, when she was forcibly and illegally evicted from it. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention. The Chamber therefore considers that the first apartment is the applicant's "home" for this purpose.

67. The applicant stated that the persons who evicted her allegedly claimed to have received a decision from an official of the Republika Srpska entitling them to occupy the apartment. Since she was, however, evicted from the apartment prior to the entry into force of the Agreement, the Chamber has no competence *ratione temporis* to examine that event.

68. As noted above (see paragraphs 12, 15 and 16), the applicant initiated judicial and administrative proceedings seeking to regain possession of the first apartment. However, these proceedings have been unsuccessful to date and she has not yet regained possession of that apartment.

69. Therefore, the applicant has been unable to regain possession of the first apartment due to the failure of the authorities of the Republika Srpska to deal effectively with her various applications in this regard which she commenced in September 1997. Therefore, the respondent Party is responsible for the interference with the right of the applicant to respect for her home.

70. The Chamber must therefore examine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention.

71. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", serve a legitimate aim and be "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied.

72. As the Chamber has noted in the context of its examination of the case under Article 6 of the Convention (see paragraph 62 above), the Court of First Instance in Banja Luka rejected the applicant's application to regain possession of her home, as it considered itself incompetent in such matters. The Chamber has found that this is not in accordance with the Constitution of the Republika Srpska. Accordingly, the failure of the court to decide upon the applicant's proceedings is not "in accordance with the law" as required by paragraph 2 of Article 8. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

73. Regarding the administrative proceedings initiated by the applicant, the Chamber notes that, in accordance with Article 9 of the 1998 law (see paragraph 29 above), the relevant authority is required to issue a decision on a request within 30 days of its receipt. The applicant filed her request in July 1999, some seven months ago. However, no decision has been issued yet. Accordingly, also the actions of the Commission are not "in accordance with the law".

74. In conclusion, there has been a violation of the right of the applicant to respect for her right to her home as guaranteed by Article 8 of the Convention.

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

75. The applicant did not specifically complain that her right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention has been violated. The Chamber considers, however, that the case raises an issue under this provision, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

76. The Chamber notes that, in accordance with Article 19 of the Law on Housing Relations (see paragraph 44 above) the applicant is deemed to be, together with her husband, the holder of the occupancy right over the first apartment. The Chamber has previously held as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

> "...[A]n occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 [of Protocol No. 1]..."

77. Accordingly, the Chamber considers that the applicant's rights in respect of the first apartment constitute a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

78. The Chamber considers that the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of the first apartment constitutes an "interference" with her right to peaceful enjoyment of her possession. This interference is ongoing as the applicant still does not enjoy possession of that apartment.

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

80. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the failure of the authorities to enable the applicant to regain possession of the first apartment was not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated.

4. Discrimination

81. The applicant claimed that she had been a victim of a violation of Article 14 of the Convention, which guarantees freedom from discrimination in the enjoyment of the rights guaranteed by the Convention.

82. The applicant has not provided any evidence which would tend to indicate that she has been discriminated against in the enjoyment of any of her rights as protected by the Convention or the other international agreements listed in the Appendix to the Agreement. Nor can the Chamber of its

own motion find any such evidence. Accordingly, the Chamber does not consider it established that there has been any violation of the applicant's right to freedom from discrimination.

VII. REMEDIES

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

84. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain possession of the first apartment without further delay, and in any event no later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. The order for provisional measures (see paragraph 4 above) would be lifted at the time of the applicant regaining such possession.

85. The applicant has claimed compensation of 20,000 Convertible Marks (*Konvertibilnih Maraka*). She requests this amount for her eviction from the first apartment, for the stress caused thereby and for movable property which was taken from her as a result of the eviction. She does not specify this property in detail, but makes reference to her daughter's piano.

86. Concerning the applicant's claim for compensation in respect of her eviction and consequent stress, the Chamber has held (see paragraph 67 above) that this event is outside its competence *ratione temporis*. In addition, the Chamber has previously held that a respondent Party cannot be held responsible for movable property taken by an illegal occupant (see case no. CH/96/17, *Blentić,* decision on compensation of 22 July 1998, Decisions and Reports 1998, paragraph 10). Accordingly, the compensation claim must be rejected in its entirety.

87. However the Chamber does consider it appropriate to award the applicant compensation in recognition of the mental suffering she undoubtedly underwent as a result of her inability to regain possession of her home. The Chamber, taking into account the fact that the applicant was allocated the second apartment, considers 1,000 Convertible Marks to be an appropriate amount.

VIII. CONCLUSIONS

88. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the impossibility for the applicant to have the merits of her civil action determined by a tribunal constitutes a violation of her right to effective access to court within the meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment at Relje Krilatice 7, Banja Luka, involves a violation of the applicant's right to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment at Relje Krilatice 7, Banja Luka, involves a violation of the applicant's right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it has not been established that the applicant has been discriminated against in the enjoyment of any of the rights guaranteed in the Agreement;

6. unanimously, to order the Republika Srpska, swiftly, and in any event not later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, to take all necessary steps to enable the applicant to regain possession of the apartment located at Relje Krilatice 7, Banja Luka;

7. unanimously, to withdraw the order for provisional measures of 24 August 1998 in the case as of the date the applicant regains possession of the apartment located at Relje Krilatice 7, Banja Luka;

8. unanimously, to order the Republika Srpska to pay the applicant, within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 1,000 (one thousand) Convertible Marks as compensation for mental suffering sustained;

9. unanimously, to order that simple interest at an annual rate of four per cent will be payable on the amount awarded in conclusion 8 above after the expiry of the period set in that conclusion for the payment of such amount; and

10. unanimously, to order the Republika Srpska to report to it, within two weeks of the expiry of the time-limit referred to in conclusion 6 above, on the steps taken by it to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel