DECISION ON ADMISSIBILITY AND MERITS
(delivered on 12 May 2000)

Case no. CH/99/2233

Nada ČIVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 May 2000 with the following members present:

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

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 Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicant, a medical doctor, is a citizen of Bosnia and Herzegovina of Serb origin. On 27 December 1991 she purchased from the Yugoslav National Army ("JNA") an apartment in Sarajevo over which she had an occupancy right. She paid the full purchase price on 10 January 1992. However, she was never registered as the owner of the apartment. Some time after the applicant left Sarajevo in March 1995, three persons from Montenegro moved into the apartment.

2. When the applicant and her family returned to Sarajevo in October 1997, they found the apartment occupied. Since then, the applicant has neither been able to register as the owner of the apartment nor to regain possession of it.

3. The applicant alleges violations of her rights to peaceful enjoyment of her possessions and to respect for her private and family life. The application 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

4. The application was introduced on 28 May 1999 and registered on the same day. The applicant is represented by Mr. Esad Čivić, her husband.

5. The applicant requested the Chamber to issue an order for provisional measures to forcibly evict the current occupants of the apartment. Her request was rejected on 7 June 1999.

6. On 21 June 1999 the case was transmitted to the respondent Parties for their observations on the admissibility and the merits of the case. On 20 August 1999 the Chamber received observations from the Federation of Bosnia and Herzegovina. No observations were received from Bosnia and Herzegovina. On 3 September 1999 the observations of the Federation were transmitted to the applicant and to Bosnia and Herzegovina.

7. On 20 September 1999 the Chamber received a response from the applicant. She claimed compensation for the mental distress she had suffered and for pecuniary damages covering all extra expenses she had incurred due to her inability to regain possession of the apartment. The applicant's submissions were transmitted to the Federation of Bosnia and Herzegovina on 23 September 1999. On 8 October 1999 the Federation submitted additional observations.

8. The applicant specified her compensation claim by a letter received on 14 April 2000. On 28 April 2000 the Federation of Bosnia and Herzegovina submitted additional observations on the claim for compensation.

9. On 10 March, 4 April and 8 May 2000 the Chamber deliberated on the admissibility and merits of the case. On the latter date it adopted this decision.

III. ESTABLISHMENT OF THE FACTS

A. Particular facts of the case

10. As from 14 January 1984 the applicant had an occupancy right over an apartment in Malta Street (formerly Braće Vujičlć) No. 1/VIII/16 in Sarajevo. On 27 December 1991 she entered into a contract to purchase this apartment under the Law on Securing Housing for the JNA. Shortly thereafter, on 10 January 1992, she paid the full purchase price of 990,296.25 Yugoslav dinars to the JNA Housing Fund.

11. The applicant left Bosnia and Herzegovina in March 1995 on a travel order issued by her employer, the state clinic in Sarajevo. She did not return to Sarajevo until October 1997. Upon her arrival, she found that the apartment was occupied by three persons from Montenegro who had lived there since 1996. The apartment had been declared temporarily abandoned by the competent military

organ on 5 July 1995 and subsequently allocated to a member of the army of the Republic of Bosnia and Herzegovina. The applicant has not received a decision about the reallocation. She claims that the three current users are not the ones the apartment was initially allocated to and that they are occupying the apartment illegally.

1. Proceedings involving organs associated with the army of the Federation of Bosnia and Herzegovina

12. On 26 April 1996 the applicant requested through her legal representative in Sarajevo the General Staff of the Army of the Republic of Bosnia and Herzegovina to permit her reinstatement into the apartment. As she did not receive an answer she complained to the same authority, on 11 September 1996 and 7 July 1997, about the "silence of administration". Finally, on 26 June 1997 the General Staff rejected her claim of 11 September 1996 pursuant to Article 10 of the Law on Abandoned Apartments for having been submitted too late.

13. On 10 September 1997 the applicant appealed to the Ministry of Defence of the Federation of Bosnia and Herzegovina, alleging that the General Staff had made incorrect findings as to both facts and law. Her appeal was rejected by the Ministry on 16 October 1997 as ill-founded and the General Staff's decision was confirmed with reference to Article 10 of the Law on Abandoned Apartments.

14. The applicant has also attempted to obtain a decision from the Federal Ministry of Defence in order to be registered as the owner of the apartment in the land registry. On 22 July 1999 the responsible department for military housing affairs in the Municipality of Novo Sarajevo refused to process the request because the applicant was not in possession of the apartment.

2. Court proceedings

15. In order to obtain registration as the owner of the apartment, the applicant initiated proceedings before the Municipal Court II in Sarajevo on 12 November 1996. In a procedural decision dated 19 November 1996 the court decided to adjourn the proceedings by virtue of a decree of 10 February 1995 (see paragraph 24 below).

16. On 21 July 1999 the applicant requested the court to resume the adjourned proceedings in the light of the new legislation that had come into force. A hearing was scheduled for 2 November 1999 but did not take place because the representative of the Army Housing Fund was not present. No decision has been made until now.

3. Administrative proceedings

17. On 28 April 1998 and on 14 May 1998 the applicant applied to the Secretariat for Housing Affairs of the Municipality of Novo Sarajevo and the Administration for Housing Affairs of the Canton Sarajevo respectively, requesting reinstatement into possession of the apartment pursuant to Article 4 of the Law on Cessation of Application of the Law on Abandoned Apartments. The latter authority held a public hearing on 27 July 1998 in the presence of the applicant and one of the current occupants. During this hearing, the occupant stated that there was no alternative accommodation available to the occupants should they have to leave the premises in question. The applicant claimed that she had not received any decision about the re-allocation of her apartment. Several other hearings have taken place, the last one on 18 February 2000, during which the applicant was requested to provide evidence of her wartime residence.

18. On 9 September 1999 the applicant complained to the Ministry of Justice of the Federation of Bosnia and Herzegovina that she had not received an answer from the competent administrative body allowing her to return to the apartment.

4. Proceedings before other international bodies

19. On 27 November 1996 the applicant submitted a claim to the Commission for Real Property

Claims ("Annex 7 Commission") in order to regain possession of her apartment. She has not received a reply. However, in an oral conversation the applicant was given to understand that the Annex 7 Commission is currently not dealing with requests for reinstatements concerning JNA apartments.

20. On 30 December 1997 the applicant filed an application with the Office of the Ombudsperson for Bosnia and Herzegovina.

B. Relevant domestic law

1. Legislation relating to JNA apartments

21. The apartment in question was originally socially owned property over which the JNA had jurisdiction. Socially owned property was considered to belong to society as a whole. The applicant enjoyed an occupancy right over the apartment. Such an occupancy right conferred, among other things and subject to certain conditions, the right to occupy an apartment on a permanent basis.

22. Relevant to this case is the Law on Securing Housing for the JNA which was passed in 1990 and came into force on 6 January 1991 (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" – no. 84/90). This law established that JNA apartments could be sold to the members of the JNA (Article 20). It also provided for procedures to do so (Article 36). In the following years a number of decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina. These laws regulated matters of socially owned property in general and property over which the JNA had jurisdiction in particular.

23. One of these legal instruments was a decree issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 4/92). The decree imposed a temporary prohibition on the sale of socially owned apartments, specifically under the means established by the Law on Securing Housing for the JNA. It also provided that contracts and other legal acts concluded contrary to the decree were invalid. Courts and other state organs should not verify signatures or register titles or take any other action contrary to the prohibition. The temporary ban on sales was valid until the entry into force of a law regulating, *inter alia,* the sale of apartments over which the JNA exercised jurisdiction or, at the longest, for one year following the date of issue of the decree.

24. On 10 February 1995 a decree with force of law issued by the Presidency of the Republic of Bosnia and Herzegovina came into force (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – no. 5/95). The decree ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. The decree suspended court proceedings until new legislation was adopted.

25. On 22 December 1995 the Presidency issued another decree with force of law (OG RBiH no. 50/95) declaring all contracts for the sale of apartments and other property concluded on the basis of, *inter alia*, the Law on Securing Housing for the JNA as retroactively invalid. It was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 18 January 1996 (OG RBiH no. 2/96) and promulgated on 25 January 1996. The law also provided that questions connected with annulled real estate purchase contracts would be resolved under a law to be passed in the future.

26. The Law on Sale of Apartments with an Occupancy Right came into force on 6 December 1997 and has subsequently been amended (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 27/97, 11/98, 27/99 and 7/00). This law did not affect the annulment of the applicant's contract. Under Article 39 of the law, an occupancy right holder who contracted to purchase an apartment on the basis of the Law on Securing Housing for the JNA was to be credited the amount that had been previously paid.

27. Article 39(a) of the law, introduced by the High Representative and entered into force on 5 July 1999, provides for registration as an owner if the occupancy right holder entered into a legally binding purchase contract before 6 April 1992 and if he or she is in possession of the apartment. According

to this provision, the Federal Ministry of Defense shall issue an order for registration with the responsible court. Article 39(c) provides that Article 39(a) shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on the Cessation of the Application of the Law on Abandoned Apartments. Article 39(d) stipulates that a person may initiate court proceedings if he or she does not realise his or her rights under this law with the Federal Ministry of Defense.

2. The Law on Abandoned Apartments

28. The Law on Abandoned Apartments was originally issued on 15 June 1992 as a decree with force of law. It was adopted as law on 1 June 1994 and amended various times (OG RBiH nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). It governed the re-allocation of occupancy rights over socially owned apartments that had been abandoned.

29. According to Article 1 of this law, an occupancy right expired if the holder of the right and the members of his or her household had abandoned the apartment after 30 April 1991. An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder or members of the household (Article 2). There were, however, certain exceptions to this definition. For example, an apartment was not to be considered abandoned if the apartment was destroyed, burnt or in direct jeopardy as a result of war actions. If the holder of the occupancy right failed to resume using the apartment within the time-limit of one or two weeks as laid down in Article 3 read in conjunction with Article 10, an apartment was to be considered permanently abandoned.

30. An apartment could be declared abandoned by the competent municipal housing authority either *ex officio* or upon request of an allocation right holder (i.e. a juridical person authorised to grant permission to use an apartment), a political or a social organisation, an association of citizens or a housing board. An apartment declared abandoned could be allocated for temporary use to "an active participant in the fight against the aggressor of the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostilities. Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged to vacate the apartment at the end of that period and to place it at the disposal of the authority that had allocated it.

3. The Law on Cessation of Application of the Law on Abandoned Apartments

31. The Law on Cessation of Application of the Law on Abandoned Apartments entered into force on 4 April 1998 and has been amended on several occasions thereafter (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99).

32. According to this legislation, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights on the basis of regulations issued under the previous law shall be null and void. Nevertheless, all decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with this law. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered as a "temporary user" (Article 2).

33. Under the provision of this law, the occupancy right holder shall be entitled to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). All claims for repossession shall be presented to the municipal administrative authority competent for housing affairs (Article 4). The authority shall decide on such a repossession claim within 30 days (Article 6). The decision shall be delivered to the occupancy right holder, the holder of the allocation right and the current occupant within five days from its issuance. An individual has 15 days from the date of receipt of the decision in which to appeal to the Cantonal Ministry for Housing Affairs. An appeal shall not suspend the execution of the decision (Article 8). In no event shall a failure of the responsible bodies to meet their obligations under Article 3 delay "the ability of an occupancy right holder to enter into possession of the apartment" (Article 3 paragraph 9).

34. If the apartment is occupied without a legal basis when the new Law entered into force, the occupancy right holder shall be granted repossession of the apartment without any restriction and any

temporary user shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A person who is temporarily occupying the apartment and whose housing needs are otherwise met shall vacate the apartment within 15 days from the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4).

35. With a few exceptions not relevant to the present application, the time-limit for an occupancy right holder to file a claim for repossession expired on 4 July 1999 (Article 5 paragraph 1). Upon receipt of such a claim, the competent authority had 30 days to issue a decision. Following a decision on repossession, appeals could be lodged by the occupancy right holder, the current occupant and the allocation right holder before the cantonal ministry responsible for housing affairs within 15 days from the date of receipt of the decision. However, an appeal has no suspensive effect (Article 8).

36. If the person occupying the apartment fails to comply with a decision ordering its vacation, the competent administrative body shall take enforcement measures at the request of the occupancy right holder (Article 11).

4. The Law on Administrative Proceedings

37. Under Article 216 paragraph 1 of the Law on Administrative Proceedings (OG FBiH no. 2/98) the competent administrative organ has to issue a decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration").

IV. COMPLAINTS

38. The applicant alleges a violation of her right to property, private and family life. The case raises issues under Article 6 and 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

39. The Federation argues that the application is inadmissible for failure to exhaust domestic legal remedies. It states that the applicant should have appealed to the competent administrative organ of second instance to regain possession instead of requesting a provisional measure from the Chamber. The Federation claims that the applicant's inability to register as the owner of the apartment is a direct consequence of her failure to exhaust domestic remedies in accordance with Article 39(a) of the Law on Sale of Apartments with an Occupancy Right. It furthermore expresses doubts whether the applicant wants to return to the apartment at all. Moreover, it is asserted that the "six-month rule" in Article VIII(2)(a) of the Agreement has not been complied with.

40. With regard to the merits, the Federation asserts that it is not responsible for a possible violation of the applicant's right to respect for her home since the applicant left her apartment in 1995 voluntarily. It is also stated that a possible violation of Article 1 of Protocol No. 1 to the Convention was removed by the High Representative's amendments to Article 39 of the Law on Sale of Apartments with an Occupancy Right.

41. The Federation also states that it cannot be held responsible for any claim of the applicant regarding pecuniary damages. It asserts that the applicant's compensation claim is ill-founded and excessive.

B. Bosnia and Herzegovina

42. No observations were received from Bosnia and Herzegovina.

C. The applicant

43. The applicant states that, in her efforts to regain possession of the apartment and to be registered as the owner, she has addressed all possible authorities in vain, therefore not finding any remedy to be effective. She further asserts that the Federation's statements are incorrect and unacceptable. She maintains her complaints regarding possible violations of human rights and the claim for compensation.

VI. OPINION OF THE CHAMBER

A. Admissibility

1. Requirement to exhaust effective domestic remedies

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

45. As in previous cases concerning JNA apartments, the Federation of Bosnia and Herzegovina argues that the applicant has failed to exhaust all domestic remedies and that the application is inadmissible since the second instance administrative housing organs have not been appealed to until now.

46. In the *Onić* case (no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber, basing itself on the practice of the European Court of Human Rights, held:

> "... [Domestic] remedies must be sufficiently certain not only in theory but [also] in practice, failing which they will lack the requisite accessibility and effectiveness. ... [I]t is necessary to take realistic account not only of the existence of formal remedies in the legal system ... but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

47. The Chamber notes that the applicant, in April and May 1998, initiated administrative proceedings before the Secretariat for Housing Affairs of the Municipality of Novo Sarajevo and the Administration for Housing Affairs of the Canton Sarajevo in order to repossess the apartment pursuant to Article 4 of the Law on Cessation of Application of the Law on Abandoned Apartments. Then, in July 1998, a public hearing was held before the latter authority. However, no decision has been made to date despite the expiry of the time-limit of 30 days provided for in Article 6 of that Law (see paragraph 33 above). The respondent Party has failed to give a reasonable explanation for the delay. The applicant has also complained to the Ministry of Justice of the Federation without any result.

48. Regarding the registration procedure, the applicant has demonstrated that she requested the Municipal Court to resume the proceedings concerning her registration as owner of the apartment in July 1999. She has also tried to obtain a decision from the Federal Ministry of Defence pursuant to Article 39(a) of the Law on Sale of Apartments with an Occupancy Right but failed because she was not in possession of the apartment.

49. Taking into account all the aforementioned actions, the Chamber finds that the available domestic remedies, including those introduced under the new legislation, have not proven to be effective in practice and that, therefore, the applicant has exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement.

2. The six-month rule

50. Moreover, the respondent Party alleges that the six-month time-limit pursuant to Article

VIII(2)(a) of the Agreement has not been complied with by the applicant.

51. The Chamber notes that the decree of 22 December 1995 provided that questions connected with the purchase of real estate that was the subject of annulled contracts would be resolved under a new law to be adopted in the future. Legislation to that effect was enacted in 1997 and amended thereafter. However, this law did not affect the provisions annulling the applicant's contract. Moreover, as noted above (paragraphs 14, 16 and 17), no decisions were made neither in the proceedings concerning the registration nor in those regarding the entry into possession of the apartment that were initiated by the applicant.

52. In these circumstances, the Chamber is unable to identify any "final decision" from which the six-months' period stipulated in Article VIII(2)(a) of the Agreement started to run (see also, e.g., cases nos. CH/98/159 *et al.*, *Huselić and others*, decision on admissibility and merits delivered on 11 June 1999, paragraph 31, Decisions January-July 1999). It follows that the Federation's objections must be rejected.

3. *Lis alibi pendens*

53. The Chamber further notes that the applicant has filed a claim with the Annex 7 Commission. According to Article VIII(2)(d) of the Agreement, the Chamber may reject or defer further consideration of a case if it is currently pending before another Commission established by the Annexes to the Agreement. According to Article XI of Annex 7, the mandate of that Commission is confined to deciding on claims for real property in Bosnia and Herzegovina, where the property has not been sold voluntarily or otherwise transferred since 1 April 1992 and where the claimant does not now enjoy possession of that property.

54. The Chamber considers that in the present case, like in others it has decided previously (see, e.g., case no. CH/98/756, *Đ.M.*, decision on admissibility and merits delivered on 14 May 1999, paragraph 60, Decisions January-July 1999), the applicant has raised complaints substantially different from the subject matter brought before the Annex 7 Commission, involving Articles 6 and 8 of the Convention and a claim for compensation. Moreover, the Annex 7 Commission has until now not issued decisions confirming property rights in cases of JNA apartments.

55. The Chamber finds therefore that the applicant's pending claim before the Annex 7 Commission does not preclude it from examining the whole of her present case even if one of the subject matters now before the Chamber remains pending before that Commission. It follows that the admissibility criteria in Article VIII(2)(d) of the Agreement have been met.

4. Conclusion as to admissibility

56. As no other ground for declaring the case inadmissible has been shown, the Chamber declares the application admissible.

B. Merits

57. Under Article XI of the Agreement the Chamber must address the question whether the facts established above indicate a breach by one or both of the respondent Parties of their obligations under the Agreement. In terms of Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention.

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

(a) Regarding the purchase contract

58. The applicant complains that the contract for the purchase of her apartment was annulled retroactively by the decree of 22 December 1995, which was adopted as law on 18 January 1996. She alleges a breach of Article 1 of Protocol No. 1 to the Convention, which is in the following terms:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No

one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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

59. As to the nature of the applicant's rights under the purchase contract at the time when the decree of 22 December 1995 came into force, the Chamber refers to its case-law according to which such contracts conferred on the purchaser a valuable asset constituting a "possession" for the purposes of Article 1 of Protocol No. 1 (see cases nos. CH/96/3, 8 and 9, *Medan, Bastijanović and Marković*, decision on the merits delivered on 7 November 1997, paragraphs 32-33, Decisions on admissibility and merits 1996-1997, and cases nos. CH/96/2 *et al.*, *Podvorac and others*, decision on admissibility and merits delivered on 12 June 1998, paragraphs 60-61, Decisions and Reports 1998). The Chamber makes the same finding in the present case. The effect of the decree was to annul those rights and the applicant was therefore deprived of her possession.

60. The Federation has asserted that the applicant's inability to register as the owner of the apartment was caused by her failure to exhaust domestic remedies. The Chamber notes that by virtue of Article 39(a) of the Law on Sale of Apartments with an Occupancy Right, registration can be pursued if the owner is in possession of the apartment. The Chamber also notes that the applicant has initiated administrative proceedings in that respect in April 1998. The competent authorities have not issued a decision within the time-limit of 30 days prescribed by Article 6 of the Law on Cessation of Application of the Law on Abandoned Apartments despite her various interventions. Furthermore, they have failed to give a reasonable explanation for the delay. The Chamber therefore considers it established that, by denying her the right to repossess the apartment, the Federation is responsible for the applicant's inability to be registered as the owner of the apartment.

61. The Chamber concludes that the legislation posterior to the decree of 22 December 1995 and the related law of 18 January 1996 has not remedied the violation of the applicant's rights under the original contract of 27 December 1991.

62. In conclusion, the Chamber finds that the present applicant was made to bear an "individual and excessive burden" and that there has been a violation of Article 1 of Protocol No. 1 to the Convention. Whereas Bosnia and Herzegovina is responsible for enacting the initial legislation, the Federation of Bosnia and Herzegovina is responsible for the continuing inability of the applicant to be registered as owner of the apartment.

(b) Regarding the occupancy right

63. The Chamber recalls its consistent case-law according to which an occupancy right is a possession within the meaning of Article 1 of Protocol No. 1 (see, e.g., 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). It has also found in previous cases that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person, done pursuant to the Law on Abandoned Apartments amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1 (see, e.g., case no. CH/97/42, *Eraković*, decision on admissibility and merits delivered on 15 January 1999, paragraph 60, Decisions January-July 1999).

64. The Chamber notes that the apartment in question was declared temporarily abandoned by the competent military administrative housing organ on 5 July 1995 and subsequently allocated to a member of the army of the Republic of Bosnia and Herzegovina. Apparently, the applicant was never notified of this decision until October 1997 when her claim for repossession was rejected by the Federal Ministry of Defence. The applicant has alleged that the current occupants are not the ones the apartment was initially allocated to and that they live there without any legal basis.

65. Accordingly, the Chamber finds that the applicant's rights under Article 1 of Protocol No. 1 to the Convention were violated by the Federation authorities' continued refusal to recognise the applicant's occupancy right and allow her to return to the apartment following her request for re-

instatement of 28 April and 14 May 1998 and contrary to the procedure set up by the Law on Cessation of Application of the Law on Abandoned Apartments.

2. Article 8 of the Convention

66. Article 8 of the Convention reads, as far as relevant, as follows:

> "1. Everyone has the right to respect for ... his home ...
>
> 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."

67. The Chamber notes that the applicant left the apartment in March 1995 for reasons related to her employment as a medical doctor at the state clinic in Sarajevo and pursuant to a valid travel order issued by that institution. She was unable to return to the apartment which was eventually declared temporarily abandoned.

68. The Chamber has already found that the links which an applicant facing similar difficulties retained to his dwelling sufficed for this to be considered his or her "home" for the purposes of Article 8 paragraph 1 of the Convention (see, e.g., the above-mentioned *Eraković* decision, paragraph 48). This link is strengthened in the present case by the fact that the applicant had contracted to purchase and, indeed, had paid for the apartment. It is not relevant that the applicant has left the apartment voluntarily, as the Federation has asserted. The applicant has returned to Bosnia and Herzegovina and attempted to regain possession of her apartment since April 1996. The Chamber, therefore, considers that there has been an ongoing interference with the applicant's right to respect for her home.

69. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied (see the above-mentioned *Onić* decision, paragraph 49).

70. In previous cases, the Chamber has found that the provisions of the Law on Abandoned Property, as applied also in the present case, failed to meet the standards of "law" as this expression is to be understood for the purposes of Article 8 of the Convention (see the above-mentioned *Eraković* decision). In the present case the Chamber sees no reason to differ. It follows that this provision was violated by the Federation authorities' continued application of Article 10 of the Law on Abandoned Apartments and the refusal to allow the applicant to return to her apartment following the request for re-instatement of 28 April and 14 May 1998, being in contradiction to Articles 4 and 6 of the Law on Cessation of Application of the Law on Abandoned Apartments.

71. As far as the present case also relates to the application of the Law on Cessation of Application of the Law on Abandoned Apartments, the Chamber notes that the applicant's claim for repossession initiated on 28 April 1998 has not been decided in compliance with the time-limit of 30 days stipulated in Article 6 of this law. In addition to the violation arising from the decision to declare the applicant's apartment temporarily abandoned, there is, thus, an ongoing violation of her right to respect for her home in so far as the procedure for examining her repossession claim has not been "in accordance with the law" either (see also the above-mentioned *Eraković* decision, paragraph 51).

72. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given both the refusal to allow the applicant to repossess the apartment and the subsequent failure to decide on the repossession claim within the time-limit contained in Article 6 of the Law on Cessation of Application of the Law on Abandoned Apartments.

3. Article 6 of the Convention

73. The court proceedings initiated by the applicant were initially adjourned and have, so far, not led to any decision. The Chamber considers that the conduct of these proceedings raises a question as to the applicant's effective access to court, as guaranteed by Article 6 paragraph 1 of the Convention. This provision reads, as far as relevant, 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. ..."

74. Noting that the domestic proceedings in the applicant's case concern her property rights, the Chamber finds that these proceedings relate to her "civil rights" within the ambit of Article 6 paragraph 1.

75. The Chamber observes that the applicant, on 12 November 1996, initiated court proceedings with a view to obtain recognition of her ownership and registration in the Land Registry. These proceedings were compulsory adjourned on 19 November 1996 by virtue of the decree of 10 February 1995. The Federation of Bosnia and Herzegovina enacted the legislation needed to lift the adjournment on 6 December 1997. Accordingly, there was an interference from 12 November 1996 until 6 December 1997 with the applicant's effective access to court, as guaranteed by Article 6 of the Convention (see the above-mentioned decisions in the cases of *Medan, Bastijanović and Marković* and *Podvorac and others*, paragraphs 40 and 64, respectively, and the judgment of the European Court of Human Rights in the case of *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, paragraphs 35-36).

76. Following the initiation and subsequent adjournment of the court proceedings, the applicant filed a request to have the proceedings resumed on 21 July 1999. She also initiated administrative proceedings on 28 April 1998 aiming at re-instatement into possession of the apartment. Both the judicial and the administrative proceedings are still pending. The Chamber considers therefore that the case raises the question whether the proceedings have been expedited within a reasonable time. The reasonableness of the length of proceedings is determined on the basis of the complexity of the case and the conduct of the applicant and the authorities (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

77. The issues underlying the proceedings in the case concern the ownership and repossession of the apartment in question. The Chamber cannot find these issues to be of a particularly complex nature. Concerning the conduct of the applicant, it is evident that she has initiated various procedures available to her and tried to obtain decisions as soon as possible.

78. The authorities of the Federation have, on their part, not met their responsibility to ensure that the proceedings are carried out within a reasonable length of time. Instead, several hearings have been scheduled and postponed without good cause both in the judicial and the administrative proceedings.

79. It follows that the Federation of Bosnia and Herzegovina is responsible for the denial of an effective access to court for the above-mentioned length of time. The Federation has also violated Article 6 paragraph 1 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time.

VII. REMEDIES

80. 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 (including pecuniary and non-pecuniary damages) as well as provisional measures.

81. In her submissions received on 20 September 1999, the applicant has requested the Chamber to enable her to be reinstated into her apartment. Regarding compensation, she has

specified her claim as follows: 500 Convertible Marks (*Konvertibilnih Maraka*; KM) for each month she was not able to live in her apartment from 15 May 1995 until now; KM 8,408.70 for the renovation of the interior of the apartment and KM 5,000 for mental distress suffered.

82. In the present case the Chamber finds it appropriate to order that the Federation through its authorities take immediate steps to enable the applicant to return swiftly into her apartment, and in any case not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

83. The breaches of Article 1 of Protocol No. 1 which the Chamber has found arose from the legislation already referred to. The State is responsible for having passed that legislation, but the matters which it deals with are now within the responsibility of the Federation, which recognises and applies this legislation. The Chamber considers it appropriate to order the Federation to take immediate steps to secure that the applicant is registered as the owner of the apartment within one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

84. In addition, the Chamber considers it appropriate to order the Federation to pay the applicant the sum of KM 2,500 by way of compensation for the loss of use of her apartment and moral damages suffered.

VIII. CONCLUSIONS

85. For these reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. by 5 votes to 1, that the passing of legislation providing for the retroactive nullification of the applicant's purchase contract violated the applicant's rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights, Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Human Rights Agreement;

3. by 5 votes to 1, that the recognition and application of the legislation providing for the retroactive nullification of the applicant's purchase contract has violated the applicant's rights under Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

4. unanimously, that there has been 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 in so far as she was prevented from returning to the apartment due to the decision declaring her apartment permanently abandoned and the failure after the entry into force of the Law on Cessation of Application of the Law on Abandoned Apartments to decide finally and in time on the substance of the claim for repossession, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that there has been a violation of the applicant's right to respect for her home within the meaning of Article 8 of the Convention in respect of the refusal to allow her to repossess her apartment and the failure to decide finally and in time on the substance of the applicant's claim for repossession, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that the compulsory adjournment of court proceedings since 12 November 1996 aiming at formal recognition of the applicant's property rights as well as the administrative proceedings pending since April 1998 have violated her right of access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

7. unanimously, to order that the Federation of Bosnia and Herzegovina through its authorities take immediate steps to reinstate the applicant into her apartment; in any case not later than one

month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. unanimously, to order that the Federation of Bosnia and Herzegovina through its authorities take immediate steps to secure that the applicant is registered as the owner of the apartment, in any case not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 2,500 Convertible Marks (*Konvertibilnih Maraka*) as compensation for the loss of use of her apartment and moral damages;

10. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant an annual interest rate of 4 % over the sum awarded in the previous conclusion or any unpaid portion thereof, from the day of expiry of the time-limit referred to in the previous conclusion;

11. unanimously, to reject the remainder of the claim for compensation; and

12. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within one month of the expiry of the time-limits referred to in conclusions nos. 7, 8 and 9 on the steps taken by it to give effect to this decision.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel