DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/457

Milan ANUŠIĆ

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 10 October 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. Peter KEMPEES, 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 XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant, a pensioner born in 1921, is a citizen of Bosnia and Herzegovina of Serb origin. On 5 September 1991 the applicant entered into a contract to purchase from the Yugoslav National Army ("JNA") an apartment in Sarajevo over which he held an occupancy right. During the war in Bosnia and Herzegovina the applicant left Sarajevo. Shortly after the cessation of hostilities the applicant returned to Sarajevo, only to discover that his apartment was being occupied by another individual. The applicant seeks to regain possession of his apartment and has been pursuing resolution of his case through the judicial and administrative bodies in Sarajevo.

2. While the applicant does not allege specific violations of human rights, the application raises issues of the right to a fair hearing and the rights to property and to respect for one's home.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received on 6 February 1998 and registered on 12 April 1998. On 18 May 1998 the applicant informed the Chamber that he had withdrawn his case before the Human Rights Ombudsperson for Bosnia and Herzegovina so that he could pursue his case before the Chamber.

4. The applicant submitted amendments to the application on 18 June and 27 August 1998. Also, the applicant has hand-delivered documentation to the Chamber on various occasions.

5. The Chamber considered the case on 10 September 1998 and decided to transmit the case to the respondent Parties. No response was received to this original transmittal, however.

6. On 1 December 1998 the Chamber received the applicant's claim for compensation and further information regarding his case.

7. The Chamber further considered the case on 12 January 2000 and decided to retransmit the case to the respondent Parties as it determined that the original transmittal did not encompass all the relevant issues. Bosnia and Herzegovina submitted its observations on 15 March 2000 and the Federation of Bosnia and Herzegovina on 20 March 2000. The applicant replied to both these submissions on 30 March 2000. Lastly, the Federation of Bosnia and Herzegovina submitted observations on the applicant's compensation claim on 19 May 2000.

8. The Chamber adopted this decision on 10 October 2000.

III. FACTS

A. Particular facts of the case

9. From 1965 the applicant had been living in and held the occupancy right over an apartment located at Kralja Tvrtka 1/II in Sarajevo. In 1967 the applicant completed a contract on use for the apartment. On 5 September 1991 the applicant completed a purchase contract for the apartment which stated that he had paid for the apartment in full through his contributions to the JNA Housing Fund.

10. The applicant alleges that, on 28 June 1992, he was forcibly removed from his apartment by five members of the police and arrested. According to the applicant the police suspected that he might be hiding weapons. He was then detained until his release was successfully negotiated by the International Committee of the Red Cross on 13 July 1992. Fearful of remaining in Sarajevo, the applicant went to the city of Ilidža to live with his son. Since that time the applicant and his family have lived in different locations around the Sarajevo area.

11. After the cessation of hostilities in Bosnia and Herzegovina, the applicant returned to his apartment to discover that it was being occupied by E.B. On 22 April 1996 the applicant requested to the Municipality Centre - Sarajevo, Municipal Secretariat for Physical Planning and Housing Affairs ("the Municipality") that E.B. be evicted and the applicant be allowed to regain possession of his apartment. That body rejected the request on 10 July 1996 stating that it was not competent to take such action. In the decision the applicant was advised to submit his claim to the courts.

12. On 30 July 1996 the applicant initiated proceedings before the Municipal Court I in Sarajevo to establish his title of ownership, to regain his personal property in the apartment and to have E.B. evicted. Over the course of the next two years 14 hearings were scheduled but none were actually held because E.B. failed to appear in each instance. Finally, at the fifteenth scheduled hearing of 23 September 1998, the Court passed a judgment that the applicant's claim to his personal property be rejected and that the proceedings regarding E.B.'s eviction and the determination of whether the applicant owned the apartment be "suspended". It is the applicant's belief that the proceedings were purposefully prolonged in an agreement between E.B. and the judge in charge of the case. On 16 November 1998 the applicant appealed to the Cantonal Court in Sarajevo, asking that the decision of the Municipal Court I be quashed and the case referred back for renewed proceedings.

13. While the judicial proceedings were ongoing, the applicant submitted another claim to the Municipality on 1 June 1998 under the Law on Cessation of Application of the Law on Abandoned Apartments, seeking to regain his apartment. On 17 June 1998 the Municipality communicated the applicant's claim to the Administration within the Ministry for Physical Planning, Housing and Utility Affairs, the competent body for such claims.

14. On 26 October 1998 the Administration issued a conclusion rejecting the applicant's claim. The conclusion stated that there was nothing to show that the apartment was ever declared abandoned. Therefore, the Administration was not competent to decide his request.

15. The applicant appealed this decision on 4 December 1998 to the Cantonal Ministry for Physical Planning, Housing and Utility Affairs. In his appeal he argued that, as the judicial proceedings were suspended and the Administration had declared itself not competent to decide the request, there was no authority who could decide his case.

16. On 13 April 1999 the Cantonal Ministry issued a procedural decision on the applicant's appeal. It found that the conclusion of 26 October 1998 should be annulled and the case returned to the first instance body for renewed proceedings. The decision further stated that in the judgment of 23 September 1998 the Municipal Court I indicated that on 3 December 1992 the apartment was declared temporarily abandoned and reallocated to another user by a procedural decision of the relevant administrative body of the Sarajevo Garrison of the Army of the Republic of Bosnia and Herzegovina, the administrative body within that division of the army. The decision instructed the first instance body to determine more carefully the status of the apartment in making its decision in the renewed proceedings. It is not clear if these proceedings have ever been begun.

17. On 3 August 1999 the applicant submitted a request to the Ministry of Defence of the Federation of Bosnia and Herzegovina that he be registered as the owner of the apartment with the relevant court. It does not as yet appear that there has been a decision in this matter.

18. On 27 October 1999 the applicant received a procedural decision from the Cantonal Court regarding his appeal of the judgment of 23 September 1998. The decision annulled the judgment of the first instance court regarding those parts of the proceedings which had previously been suspended by the Municipal Court I. The Cantonal Court further held that the apartment was not declared abandoned and therefore the courts were able to determine his claim and consequently ordered renewed proceedings before the Municipal Court I.

19. Accordingly, a hearing was scheduled for 12 February 2000 with the Municipal Court I but the opposing party did not appear. The applicant states that before the hearing officially began the presiding judge in the case told him that no decision would be made regarding the case until the applicant could prove that he had purchased the apartment and that the applicant was the owner according to the land registry.

20. When the applicant again went to the relevant housing authority within the Ministry of Defence to be registered as the owner, he was informed that he could not be registered as the owner until he was actually in the apartment. The case has not proceeded from this point.

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 and over which the applicant enjoyed an occupancy right. Socially owned property was considered to belong to society as a whole. Among other things, an occupancy right conferred a right, subject to certain conditions, to occupy an apartment on a permanent basis.

22. Relevant to this case is the Law on Securing Housing for the JNA which 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), having regard to their contributions to the JNA housing fund. It also established the authority so that procedures could be set up 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. The aim of those laws was to regulate issues of socially owned property in general and socially owned property over which the JNA had jurisdiction in particular.

23. These laws included a decree issued on 15 February 1992 ("the 1992 decree") by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" – no. 4/92). Article 1(3) of this 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. Article 3 of the decree provided that "the contracts on the purchase of apartments or any other legal transactions entered into, i.e. legal documents issued contrary to this decree, are null and void". Article 4 provided that courts and other state organs should not verify signatures or register titles or take other action which was contrary to the prohibition provided in Article 1. Article 5 stated that the temporary prohibition on sales was valid until the entry into force of a law regulating apartments over which the JNA exercised jurisdiction or, at the longest, for a year following the date of issue of the decree.

24. On 3 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (OG RBiH no. 5/95) which 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 until new housing legislation had been adopted.

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

26. The Law on the 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 and 27/99). This law, as amended, does not affect the annulment of the present applicant's contract. Under Article 39 of this law, an occupancy right holder who contracted to purchase an apartment on the basis of the Law on Securing Housing for the JNA shall be credited the amount which has been previously paid, calculated in German Marks (DEM) at the exchange rates valid on the day of contracting.

2. The Law on Abandoned Apartments

27. The Law on Abandoned Apartments ("the old law"), issued on 15 June 1992 as a decree with force of law, was adopted as law on 1 June 1994 and amended on various occasions (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.

28. According to the old 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 (Article 1). 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 (Article 3 paragraph 2).

29. Proceedings aimed at having an apartment declared abandoned could be initiated by a state authority, a holder of an allocation right (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. Except for certain exceptions not relevant to the present application, the competent municipal housing authority was to decide on a request to this end within seven days and could also *ex officio* declare an apartment abandoned (Article 4). Failing a decision within this time-limit, it was to be made by the Ministry for Urban Planning, Housing and Environment. Interested parties could challenge a decision by the municipal organ before the same ministry but an appeal had no suspensive effect (Article 5).

30. 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 (Article 7). 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 (Article 8).

31. The occupancy right holder was to be regarded as having abandoned the apartment permanently if he or she failed to resume using it either within seven days (if he or she had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days (if he or she had been staying outside that territory) from the publication of the Decision on the Cessation of the State of War (OG RBiH no. 50/95, published on 22 December 1995). The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10 compared to Article 3 paragraph 3).

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

32. The old law was repealed by the Law on Cessation of Application of the Law on Abandoned Apartments ("the new law") which 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).

33. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 13 April 1999, also all decisions which had created a new occupancy right pursuant to regulations issued under the old law were valid unless revoked. However, on that date, the High Representative decided that any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 is cancelled. 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). Also contracts and decisions made after 7 February 1998 on the use of apartments declared abandoned are invalid. Any person using an apartment on the basis of such a contract or decision is considered to be occupying the apartment without any legal basis (Article 16).

34. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of 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). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment. In exceptional circumstances, this deadline may be extended for up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared to Article 7 paragraphs 2 and 3).

35. All claims for repossession shall be presented to the municipal administrative authority competent for housing affairs (Article 4). 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 15 months after the entry into force of the new law, i.e. on 4 July 1999 (Article 5 paragraph 1). If no claim was submitted within that time-limit, the occupancy right is cancelled (Article 5 paragraph 3).

36. Upon receipt of a claim for repossession, the competent authority, normally the municipal administrative authority for housing affairs, had 30 days to issue a decision (Article 6) containing the following parts (Article 7 paragraph 1):

1. a confirmation that the claimant is the occupancy right holder;
2. a permit for the occupancy right holder to repossess the apartment, if there was a temporary user in the apartment or if it was vacant or occupied without a legal basis;
3. a termination of the right of temporary use, if there was a temporary user in the apartment;
4. a time-limit during which a temporary user or another person occupying the apartment should vacate it; and
5. a finding as to whether the temporary user was entitled to accommodation in accordance with the Law on Taking Over the Law on Housing Relations.

37. Following a decision on repossession, the occupancy right holder is to be reinstated into his apartment not earlier than 90 days, unless a shorter deadline applies and no later than one year from the submission of the repossession claim (Article 7 paragraphs 2 and 3). Appeals against such a decision could be lodged by the occupancy right holder, the person occupying the apartment and the allocation right holder and should be submitted to 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).

38. If the person occupying the apartment refuses to comply with an order to vacate it, the competent administrative body shall forcibly evict him or her at the request of the occupancy right holder (Article 11). If the occupancy right holder, without good cause, fails to reoccupy the apartment within certain time-limits, his or her occupancy right may be terminated in accordance with the procedures established under the new law and its amendments (Article 12).

4. The Law on Sale of Apartments with an Occupancy Right

39. Relevant to the current case Article 39a of the Law on Sale of Apartments with an Occupancy Right (OG FBiH nos. 27/97 and 11/98) states that a person who entered into a contract to purchase a JNA apartment, who holds the occupancy right over said apartment, and is legally using the apartment shall be registered as that apartment's owner with the competent court by an order of the relevant housing authority within the Federation Ministry of Defence. Article 39c states that Article 39a shall also apply to an occupancy right holder who has "exercised the right to repossess the apartment under the Law on Cessation of Application of the Law on Abandoned Apartments."

40. Article 39d states that if an individual fails to realise their rights to the apartment with the Federation Ministry of Defence, they may initiate proceedings before the competent court.

5. The Law on Administrative Proceedings

41. 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

42. The applicant effectively complains that his rights to respect for his home, to peaceful enjoyment of his possessions, and to a fair hearing before an impartial tribunal within a reasonable time has been violated, as protected by Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention and by Article 6 paragraph 1 of the European Convention on Human Rights, respectively.

V. SUBMISSIONS BY THE PARTIES

A. Bosnia and Herzegovina

43. Bosnia and Herzegovina firstly argues that the application was improperly completed and that therefore the Chamber should not examine the case.

44. Bosnia and Herzegovina next asserts that the applicant did not exhaust all available legal remedies and therefore the case is inadmissible. It states that the applicant could have pursued an "action to establish" (in relation to a legal right), an ordinary appeal, and extraordinary remedies. Also, the mere doubt that the applicant would not be successful in such appeals does not provide an excuse for failing to pursue them. Further, the applicant was allegedly never deprived of the ability to pursue any such remedies and, if he had, he would have found them effective.

45. As to the merits, Bosnia and Herzegovina asserts that the applicant has made allegations based upon incorrect interpretations of the relevant laws. Further, it asserts that all actions were done in accordance with law and that therefore there are no grounds to find a violation of the Agreement.

46. Bosnia and Herzegovina did not make any observations on the compensation claim.

B. The Federation of Bosnia and Herzegovina

47. The Federation of Bosnia and Herzegovina posits a similar argument with respect to the application's completeness. It next argues that the application is inadmissible for a failure to exhaust domestic remedies. First, under Article 39(a) of the Law on Sale of Apartments with an Occupancy Right (see paragraph 39 above) the applicant has an opportunity to be registered as the owner of the apartment. The Federation continues to outline various routes the applicant could take in order to realise his rights, including various other regular and extraordinary appeals.

48. With respect to Article 6 of the Convention, the Federation argues that there has been no violation of that provision. First, it states that because the Constitution of the Federation regulates the appointment of judges, this is sufficient to ensure that the applicant has received a fair hearing before and independent and impartial tribunal. Secondly, with respect to having a hearing in a reasonable time, it argues that, given what they assert is the complex nature of the case, the relevant courts of the Federation have been considering the case in a thoughtful and thorough manner, as evidenced by the numerous hearings held, and that any delays are the fault of the applicant.

49. As to Article 8 of the Convention, the Federation begins by conceding that the residence in question is indeed the applicant's "home" in terms of Article 8 and that the protracted period of time during which the applicant has attempted to regain possession of his apartment is indeed an interference with his right to respect for his home. As to whether such interference was "necessary in a democratic society," as allowed for under Article 8 paragraph 2, it argues that is was in order to assist the numerous persons who were displaced during the war in Bosnia and Herzegovina.

50. The Federation next argues that, with the adoption of Articles 39, 39(a) and 39(b) of the Law on Sale of Apartments with an Occupancy Right, that any possible violations of Article 1 of Protocol No. 1 to the Convention have been "eliminated." Because of these provisions and others which afford the applicant means to repossessing his apartment, the Federation has afforded him enough possibilities of correcting his "mistake" of leaving his apartment of his free will during the war.

51. Lastly, with respect to the applicant's compensation claim, the Federation argues that his claim is unsubstantiated, that any damage is not its responsibility, that the claim was submitted out of time, and that, regardless, the amount claimed is too high. Therefore, it submits, the claim should be rejected in its entirety.

C. The applicant

52. In his submissions, the applicant has consistently maintained that the judge's behaviour in the Municipal Court I has shown a pattern of lack of impartiality and because of this the length of his proceedings have been unreasonable. In this connection he argues that his case is not overly complex and therefore the delays are the responsibility of the Federation.

53. With respect to the admissibility of his case, he asserts that he has pursued the relevant remedies available to him and that further pursuit of other remedies, given the state of the proceedings, would only be a legal formality and serve no substantive ends. Also with respect to admissibility of the present claim, he asserts that his application with the Chamber was completed with sufficient clarity and should therefore not be refused.

54. He further asserts that the reasons provided by the Federation as to the interference with his right to respect for his home do not constitute a legitimate aim such as accommodating other people's rights. With respect to possible violations of Article 1 of Protocol No. 1 to the Convention, he flatly refuses the Federation's assertion that it was his mistake that he left his apartment as a complete hypocrisy, based on the statement of facts outlined in paragraph 10 above, which the respondent Parties did not refute.

55. As compensation, the applicant claims monetary compensation for the loss of his apartment and movable possessions that were in it (which he has detailed for the Chamber), which, he has been informed, are no longer in the apartment. If he were to regain possession of the apartment before the Chamber renders its decision, however, he asks only for the value of the movable possessions. Further, he asks that he be reinstated to the apartment.

VI. OPINION OF THE CHAMBER

A. Admissibility

56. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in its Rules of Procedure and Article VIII(2) of the Agreement. Under Rule 46 of the Chamber's Rules of Procedure, the Chamber may decide not to examine a case if it fails to meets the application submission requirements. Further, according to Article VIII(2)(c), the Chamber shall dismiss any case which it considers incompatible with the Agreement. Lastly, under Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted.

1. Rule 46 of the Chamber's Rules of Procedure

57. The respondent Parties argue that the Chamber should not examine the application because it fails to meets the requirements regarding the content of an application as set out in Rule 46 of the Chamber's Rules of Procedure. The Chamber finds, however, that the application has been sufficiently completed within the terms of that Rule and therefore rejects the respondent Parties' arguments.

2. Article VIII(2)(c) – Incompatibility with the Agreement

58. The Chamber notes that the applicant's claims are focused on his efforts to regain the apartment since his return to Sarajevo. The efforts have been completely within the judicial and administrative systems of the Federation of Bosnia and Herzegovina. In the applicant's submissions, he has not stated, nor can the Chamber ascertain upon its own examination, how Bosnia and Herzegovina was responsible for the ongoing situation about which the applicant complains. Accordingly, the Chamber decides not to accept the application as directed against Bosnia and Herzegovina, it being incompatible *ratione personae* with the Agreement within the meaning of Article VIII(2)(c) thereof.

3. Article VIII(2)(a) – Exhaustion of effective domestic remedies

59. Given the above findings, it remains to be seen if the application is admissible with respect to the Federation of Bosnia and Herzegovina. In this regard, it is necessary to examine whether the applicant has exhausted effective domestic remedies. Previously, the Chamber has stated in reference to the requirement to exhaust domestic remedies under the former Article 26 (now Article 35(1)) of the Convention (see case no. CH/97/58, *Onić,* decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999):

> "The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that 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 … but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

60. In the present case, the applicant began proceedings in April 1996 when he first filed a claim for repossession of the apartment. As the facts above reflect, the applicant has been a party to innumerable hearings, procedures, complaints and appeals, before the administrative authorities and the courts, in an effort to determine his rights with respect to the apartment.

61. The Federation argues that because there are still appeals pending the applicant has not exhausted effective domestic remedies. The Chamber notes, however, that the applicant has been pursuing his claims for 4 years and 6 months to this point and that he has not yet received a final decision and, from the statements of the applicant which the Federation has not refuted, it would appear that he will not be able to. Accordingly, the courts and authorities of the Federation of Bosnia and Herzegovina have failed in their responsibility to take decisions in the applicant's case.

62. The Chamber also notes the Federation's arguments that recourse may be had to other appeals or extraordinary remedies which may be effective. It does not seem reasonable to the Chamber, however, that the applicant should be required to pursue other remedies when his ongoing judicial proceedings should seemingly be able to solve all the issues in question. Further, as the proceedings have been relatively active, given that hearings have been held recently, the applicant cannot be faulted for attempting to follow his current course of action to completion before proceeding to other available remedies. Therefore, given the factual background of this case, i.e. the failure of the relevant municipal and judicial authorities to bring the applicant's claims to conclusion, the applicant cannot be reasonably required to continue to pursue any other domestic remedy (see case no. CH/97/42, *Eraković*, decision on admissibility and merits delivered on 15 January 1999, paragraph 40, Decisions January-July 1999).

63. Therefore, the Chamber finds that while the pending remedies are possibly effective in theory, they have proved to be wholly ineffective in practice. In these circumstances, the Chamber finds that the applicant cannot be required to continue to pursue them for the purposes of Article VIII(2)(a) of the Agreement. Thus, as there no other arguments for declaring the case inadmissible, the case is to be declared admissible with respect to the Federation of Bosnia and Herzegovina.

B. Merits

1. Article 8 of the Convention

64. The applicant complains of a violation of the right to respect for his home. Article 8 of the Convention provides 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."

65. The Federation of Bosnia and Herzegovina concedes that the apartment in question is indeed the applicant's "home" and that his right to respect for it has been interfered with. It maintains, however, that any such interference was necessary in a democratic society and therefore there is no violation of Article 8.

66. The Chamber notes that the applicant lived in the apartment without interruption until June 1992, when he and his family left because of the war in Bosnia and Herzegovina. 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 (see, e.g., case no. CH/98/777, *Pletilić,* decision on admissibility and merits delivered on 8 October 1999, paragraph 74, Decisions August-December 1999). The Chamber therefore considers that the apartment comprises the applicant's "home" for this purpose.

67. The applicant returned to Sarajevo after the war and began attempts to repossess the apartment in April 1996. He applied to the Municipality of Sarajevo on 22 April 1996 (see paragraph 11) and he initiated court proceedings on 30 July 1996 (see paragraphs 12, 18 and 19). Both proceedings have had no success to date.

68. On 1 June 1998 the applicant submitted a claim to repossess the apartment according to Articles 4, 5 and 6 of the new Law (see paragraphs 13 to 16 above). The applicant holds the occupancy right over the apartment since 1965, and it is still valid. Consequently, he has a right to repossess the apartment according to Articles 3 and 4 of the new Law. The competent authority was obliged to decide within 30 days according to Article 6 of the Law, it had to accept the claim and had to decide positively on repossession of the apartment by the applicant (Article 7). It has not done so to date.

69. Therefore, the applicant has been unable to regain possession of the apartment due to the failure of the competent authority of the respondent Party to deal effectively with his claim for repossessing it under the new Law. The respondent Party is therefore responsible for the interference with the right of the applicant to respect for his home. In order to determine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention the Chamber must examine whether it was "in accordance with the law". As stated, the competent authority of the respondent Party violated the new Law by not accepting the claim, by not deciding positively on repossession and by not deciding at all within the time limit of 30 days. Consequently the interference is not in accordance with the law, the respondent Party being in breach of its obligations under Article 8 of the Convention.

70. The Chamber does not find it necessary to consider whether the courts of the respondent Party were obliged to issue a decision on the claim of the applicant in his favour and, whether by not complying with this obligation, violated his rights under Article 8 of the Convention.

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

71. The applicant complains of a violation of his right to enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention, 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."

72. The Federation argues that the Law on Sale of Apartments with an Occupancy Right as recently amended provides sufficient opportunity to the applicant to recover his apartment, and therefore there is no violation of this provision.

73. The Chamber has already decided that the failure of the authorities of the Federation to allow the applicant to regain possession of the apartment constitutes an interference with his right to respect for his home. The Chamber considers that the failure of the authorities to allow the applicant to regain possession of the apartment also constitutes an interference with his right to peaceful enjoyment of his possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

74. 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.

75. 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 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 his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated and this violation is ongoing.

76. The Chamber has consistently found that the rights under a contract to purchase an apartment concluded with the JNA constitute "possessions" for purposes of Article 1 of Protocol no. 1 to the Convention (see, e.g., cases nos. 96/3, 96/8, and 96/9 *Medan, Bastijanović, and Marković,* decision on the merits of 3 November 1997, paragraphs 32-34, Decisions on Admissibility and Merits March 1996-December 1997). The Chamber notes that in the present case the applicant has concluded such a contract under factual circumstances similar to those obtaining in the case cited and therefore sees no reason to differ from its previous jurisprudence.

77. Accordingly, the Chamber considers the rights of the applicant under his contract of purchase for the apartment in question constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. One such right is to be registered as the owner of the apartment with the relevant authorities, which, as described above, the applicant has been unable to do.

78. The Chamber considers that the refusal to recognise the right of the applicant to be registered as the owner amounts to an interference with his right to peaceful enjoyment of his possessions, i.e. his rights under his apartment purchase contract. This interference is ongoing, as the applicant is still not registered as the owner of the apartment. Therefore, the Chamber must examine whether this interference can be justified.

79. The Chamber notes that Article 39a of the Law on Sale of Apartments with an Occupancy Right prescribes that the Federation Ministry of Defence must issue an order allowing for the applicant to be registered as the owner under the condition that he is in possession of the apartment over which he holds an occupancy right. In this case, however, the applicant is not in possession of the apartment. Nevertheless, under Article 39c of that law, the Federation Ministry of Defence shall still issue an order to register as the owner of the apartment an individual who has exercised the right to repossess it pursuant to the new Law, regardless of whether such person is actually in possession of the apartment. In this case, the applicant exercised his right under the new Law by applying to the municipality on 1 June 1998 (see paragraph 13 above). The condition under Article 39c of the new Law has therefore been met. The Federation Ministry of Defence has apparently taken the position, however, that it will not issue the relevant order until the applicant is in possession of the apartment, which is contrary to the meaning of Article 39c. Therefore, the Federation Ministry of Defence is responsible for the applicant's inability to be registered as the owner. These actions have not been in accordance with conditions provided for by law.

80. In conclusion, therefore, the actions of the Federation Ministry of Defence Sarajevo have led to the applicant's continuing inability to registered as the owner of the apartment. Consequently, the Federation of Bosnia and Herzegovina has violated Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

81. The applicant complains that his case has not been determined within a reasonable time and that the judge in his case has acted partially. Article 6 paragraph 1 of the Convention states, in so far as relevant, as follows:

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

(a) Impartial tribunal

82. The applicant has argued that the judge in the Municipal Court I in Sarajevo dealing with his case is colluding with E.B., the respondent in the domestic proceedings, to delay the proceedings and accordingly any possible decision. He has not provided any further evidence of this claim beyond his own assertions.

83. The Federation has argued that the Constitution of the Federation of Bosnia and Herzegovina and associated Cantonal Law regarding the appointment and service of judges provides sufficient protections of the right to a hearing before an impartial tribunal.

84. While the Chamber is not necessarily convinced by the Federation's arguments, it cannot find a violation of the right in question based on the evidence before it. Absent greater substantiation, the applicant's assertions lack requisite probative value to be able to find that the judge's actions showed a lack of impartiality.

(b) Hearing within a reasonable time

85. In its findings on admissibility, the Chamber concluded that the proceedings in the applicant's case have been unjustifiably ineffective. It recalls that the applicant initiated proceedings to repossess the apartment before the administrative authorities in April 1996. A decision of those authorities stated that they were not competent to hear the claim and instead sent the applicant to the judicial system, where he submitted his case on 30 June 1996. His case has now remained within the judicial system for over 4 years without being finally concluded despite the applicant's consistent efforts.

86. The reasonableness of the length of proceedings is determined on the basis of the complexity of the case, the conduct of the applicant and the authorities, and the matter at stake for the applicant (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

87. Obviously, the issues are whether the applicant is the occupancy right holder over the apartment, whether he has the right to be registered as its owner and whether he should have the right to repossess it. While it is evident that the proceedings have been made complex, the Chamber cannot find that the substance of these issues is actually of a complex nature.

88. As to the conduct of the applicant it appears that he has been vigilant in his pursuit of the procedures available to him. He has filed his claims and appeals within the allotted deadlines and consistently been in attendance at the 15 (or more) hearings in his case.

89. The authorities in this case, however, have not met their responsibility to ensure that the proceedings are expedited in a reasonable time. The judicial proceedings have been ongoing for four years and four months. Given the Chamber's finding that the issues before the court are not of a particularly complex nature, the Chamber cannot find a reasonable explanation for the length of the proceedings. Clearly, therefore, the conduct of the authorities is the cause of the protracted delays in concluding the applicant's case.

90. Finally, the Chamber notes that a speedy outcome of the dispute is of particular importance to the applicant, given that the question concerned the repossession and ownership of, and occupancy right over, his apartment.

91. In view of the above, the Chamber finds that Article 6 paragraph 1 of the Convention has been violated in that the proceedings in the applicant's case have not been determined within a reasonable time. This violation is the responsibility of the Federation of Bosnia and Herzegovina.

VII. REMEDIES

92. 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.

93. The applicant has requested the Chamber to enable him to be registered as the owner of his apartment, to enter into possession of it, and has also claimed compensation in the amount of 140,000 Convertible Marks (*Konvertibilnih Maraka;* "KM") for the loss of his apartment and the movable property which was in it. In the alternative, if the applicant were to regain possession of the apartment, the applicant claims KM 70,000 for the movable property which he asserts has disappeared.

94. The Federation of Bosnia and Herzegovina has argued that the compensation claim is unsubstantiated, that the applicant has failed to show that it is responsible for any of the alleged damages, that in general the amount claimed is unreasonably high, and that the applicant did not submit the claim within prescribed time-limits. Therefore, it concludes, the claim should be rejected.

95. First, the Chamber recalls that the applicant is not yet in possession of the property in question. The Chamber considers it appropriate, therefore, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enable the applicant, whose occupancy right has been confirmed, to return to his property swiftly, and in any event not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. In addition, the Chamber orders the Federation to take all necessary steps to see that the applicant is registered as the owner of the apartment according to the relevant law.

96. With respect to the monetary claims, the Chamber first notes that the applicant has not shown that the loss of his personal property in the house is the responsibility of the Federation. Therefore, any claims related to these items must be rejected.

97. The applicant also generally claims compensation for the loss of the apartment. While the Chamber cannot consider this request as stated because the applicant lost possession of the apartment prior to entry into force of the Agreement, the Chamber considers it appropriate to

compensate him for his continued inability to re-enter the apartment and the failure of Federation authorities to process the applicant's case to conclusion within a reasonable time period and in accordance with law. Accordingly, the Chamber finds that the applicant suffered damage from his treatment by the authorities of the Federation and loss of his home. By its nature, the damage suffered does not lend itself to precise quantification. Following its jurisprudence, however, the Chamber will award the applicant KM 5,000 as compensation with respect to non-pecuniary damage up to and including the date of this decision, to be paid by the Federation of Bosnia and Herzegovina.

VIII. CONCLUSIONS

98. For the above reasons, the Chamber decides,

1. unanimously, to declare the application inadmissible with respect to Bosnia and Herzegovina;

2. unanimously, to declare the application admissible with respect to the Federation of Bosnia and Herzegovina;

3. by 5 votes to 1, that the refusal to allow the applicant to return to his apartment and to process his case to conclusion constitutes a violation of his right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. by 5 votes to 1, that the refusal to allow the applicant to return to his apartment and to process his case to conclusion constitutes a violation of his right to peaceful enjoyment of his possesions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. by 5 votes to 1, that the refusal to register the applicant as the owner of the apartment constitutes a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that there has been a violation of the applicant's right to a hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

7. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enable the applicant to return to his property swiftly, and in any event not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to register the applicant as the owner of his apartment swiftly, and in any event not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

9. by 5 votes to 1, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 5,000 Convertible Marks (*Konvertibilnih Maraka;* "KM"), as compensation for non-pecuniary damage;

10. by 5 votes to 1, that simple interest at an annual rate of 4% will be payable over the above sum or any unpaid portion thereof from the deadline mentioned in conclusion 8 above; and

11. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber within two weeks of the expiry of the time-limit referred to in conclusions nos. 7, 8, and 9 on the steps taken by it to give effect to this decision.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel