



**DECISION ON ADMISSIBILITY AND MERITS**  
**(delivered on 8 February 2001)**

**Case no. CH/99/1961**

**Azra ZORNIĆ**

**against**

**BOSNIA AND HERZEGOVINA**  
**THE REPUBLIKA SRPSKA**  
**and**  
**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 January 2001 with the following members present:

Ms. Michèle PICARD, President  
Mr. Giovanni GRASSO, Vice-President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Rona AYBAY  
Mr. Želimir JUKA  
Mr. Jakob MÖLLER  
Mr. Mehmed DEKOVIĆ  
Mr. Manfred NOWAK  
Mr. Miodrag PAJIĆ  
Mr. Vitomir POPOVIĆ  
Mr. Viktor MASENKO-MAVI  
Mr. Andrew GROTRIAN  
Mr. Mato TADIĆ

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 Articles VIII(2) and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. The case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina, to regain possession of an apartment located at Miroslava Krleže 12/1 in Dobrinja, Sarajevo. She holds the occupancy right over it and occupied it together with her family until 1992, when she was forced to vacate it due to the hostilities. She currently occupies another apartment in Sarajevo.

2. The applicant maintains that the area in which the apartment is located is, according to Annex 2 of the General Framework Agreement for Peace in Bosnia and Herzegovina (“the General Framework Agreement”), part of the Federation of Bosnia and Herzegovina. However, it is in fact under the control of the Republika Srpska, the other entity in Bosnia and Herzegovina. The area in question is disputed between the two Entities.

3. The applicant claims that this situation has resulted in her being unable to regain possession of her apartment. She has initiated administrative proceedings before the relevant authorities of the Federation and the Republika Srpska. The applicant currently occupies a different apartment in the Federation which is the subject of proceedings by the pre-war occupant, who holds the occupancy right over it, to regain possession of it.

4. The case primarily raises issues under Article 8 of the European Convention on Human Rights and also under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

5. The application was submitted on 29 June 1999 and registered on the same day.

6. The applicant requested that the Chamber order the Federation as a provisional measure to take all necessary steps to prevent her eviction from the apartment she currently occupies, located at Trg Sarajevske Olimpijade 5. On 7 July 1999 the Chamber refused the request and on the same day decided to transmit the case to the Republika Srpska and the Federation.

7. The observations of the Federation on the admissibility and merits of the application were received on 24 September 1999 and those of the Republika Srpska on 28 September 1999. The applicant’s further observations in reply were received on 28 October 1999. She requested that the Chamber allow her to reserve her right to submit a claim for compensation at a later stage of the proceedings. Further observations of the Federation in reply were received on 10 December 1999.

8. On 30 December 1999 the applicant submitted further information concerning the steps she had taken at national level to regain possession of the apartment. This was transmitted to the respondent Parties.

9. The Chamber considered the case on 6 June 2000 and decided to transmit it also to Bosnia and Herzegovina for its observations on its admissibility and merits and to request certain further information from the respondent Parties.

10. On 30 June 2000 the observations of Bosnia and Herzegovina on the admissibility and merits of the case were received. Further information requested was received from the Federation on 30 June 2000 and from the Republika Srpska on 31 July 2000.

11. At its session in July 2000, the Chamber decided to request the High Representative for Bosnia and Herzegovina and the Commander of the Stabilisation Force (“SFOR”) to participate in the proceedings before it. It also decided to hold a public hearing on the admissibility and merits of the case in September 2000.

12. On 15 August 2000 the applicant submitted her observations in reply to the observations of Bosnia and Herzegovina and the further observations of the Republika Srpska and the Federation. These were transmitted to the respondent Parties on 30 August 2000.

13. On 23 August 2000 the SFOR Commander informed the Chamber that he would not participate in the proceedings before the Chamber.

14. On 28 August 2000 the Office of the High Representative informed the Chamber that the High Representative would participate in the public hearing, through Mr. Matthew Hodes, Judicial Reform Co-ordinator at that office.

15. On 7 September 2000 the Chamber held a public hearing on the admissibility and merits of the application in the Cantonal Court building in Sarajevo. The applicant attended in person. Bosnia and Herzegovina was represented by one of its agents, Mr. Jusuf Halilagić. The Republika Srpska was represented by its legal representative, Mr. Stevan Savić. The Federation was represented by its agent, Ms. Seada Palavrić, assisted by Ms. Safije Lulovac and Ms. Ljiljana Savić-Branković. The High Representative, appearing as *amicus curiae*, was represented by Mr. Matthew Hodes.

16. The parties and *amicus curiae* made addresses to the Chamber, after which they answered questions put to them by members of the Chamber.

17. The Chamber deliberated on the admissibility and merits of the application on 7 September, 8 and 9 November and 8 December 2000 and on 9 January 2001.

### **III. ESTABLISHMENT OF THE FACTS**

#### **A. The particular facts of the case**

18. The facts of the case as they appear from the submissions of the parties and the documents in the case-file may be summarised as follows.

19. On 4 April 1988 the applicant was allocated an apartment located at Miroslava Krleža 12/I in Sarajevo. On 13 May 1988 she entered into a contract for its use. She occupied the apartment until 1992, when, due to the hostilities, she was forced to leave it. She remained in Sarajevo and entered into occupation of an apartment located at Trg Sarajevske Olimpijade 5/II, in Federation Sarajevo, which she still occupies. The pre-war occupant of this apartment has sought to regain possession of it and has received a decision in his favour from the competent authority. However, he has not been able to regain possession of the apartment as the applicant has not vacated it. The applicant's pre-war apartment is currently occupied by Mr. D.D., who occupies it in accordance with a decision of the Commission for Accommodation of Refugees and Administration of Abandoned Property in Srpska Ilidža, a department of the Ministry for Refugees and Displaced Persons of the Republika Srpska.

20. On 6 June 1998 the applicant applied to the competent organ of the municipality of Novi Grad in Federation Sarajevo, requesting that she be entitled to regain possession of the her pre-war apartment. On 3 August 1998 the Sarajevo Cantonal Administration for Housing Affairs issued a conclusion, rejecting the request of the applicant on the ground that that organ lacked competence to decide upon such matters. The basis given for reaching this conclusion was that the apartment had never been declared abandoned, within the meaning of the Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina no. 6/92, as amended).

21. On 14 December 1999 the applicant lodged a request for the renewal of the proceedings to the Sarajevo Cantonal Administration for Housing Affairs. In this request, she referred to certain legislative changes which had been made in July 1999, which had the effect that the relevant housing organs now have competence to decide upon requests for regaining of possession of apartments which were never declared abandoned. There has been no decision upon this request to date.

22. On 26 April 1999 the applicant applied to the Commission for Accommodation of Refugees and Administration of Abandoned Property in Srpska Ilidža, requesting that she be entitled to regain possession of the apartment. On 12 October 1999, not having received any reply to her request, she lodged a complaint against this failure to decide to the Ministry for Refugees and Displaced Persons of the Republika Srpska, at second instance.

23. During the Chamber's public hearing on 7 September 2000 the Agent of the Republika Srpska stated that, by a decision dated 11 May 2000, the Commission issued a decision, ordering the apartment to be returned into the possession of the applicant and ordering the current occupant to vacate it by 11 August 2000. This decision has not yet been implemented. An uncertified copy of the decision, bearing the date 11 May 2000, was handed to the applicant by the agent of the Republika Srpska, Mr. Savić, at the public hearing. There is no record of the delivery of the decision in question to the applicant in accordance with the relevant legal requirements.

24. The applicant has not yet regained possession of the apartment.

## **B. Relevant legislation**

### **1. Constitution of Bosnia and Herzegovina**

25. The Constitution of Bosnia and Herzegovina is contained in Annex 4 to the General Framework Agreement. Article III of the Constitution is entitled "Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities". Paragraph 1 of Article III, entitled "Responsibilities of the Institutions of Bosnia and Herzegovina" reads as follows:

"The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

- (a) Foreign policy.
- (b) Foreign trade policy.
- (c) Customs policy.
- (d) Monetary policy (...)
- (e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina.
- (f) Immigration, refugee, and asylum policy and regulation.
- (g) International and Inter-Entity criminal law enforcement, including relations with Interpol.
- (h) Establishment and operation of common and international communications facilities.
- (i) Regulation of Inter-Entity transportation.
- (j) Air traffic control."

26. In paragraph 3 of Article III, it is stated that "...(a)ll governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."

### **2. Laws in force in the Republika Srpska**

#### **(a) The Law on the Cessation of the Application of the Law on the Use of Abandoned Property**

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

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

29. The relevant body of the Ministry for Refugees and Displaced Persons (i.e. the local Commission for the Accommodation of Refugees and Administration of Abandoned Property) shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the new law to be provided with alternative temporary

accommodation. If it determines that this is the case, the Commission shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

30. Article 8 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Such claims may be filed with the Commission. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

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

32. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Proceedings (see paragraphs 35-40 below) and treated as an expedited procedure.

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

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

#### **(b) The Law on General Administrative Proceedings**

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

36. Article 5 of the law states that organs conducting administrative proceedings shall act in such a manner as to enable the parties to the proceedings to realise their rights in the most efficient way possible, having regard both to the public interest and to the interests of others affected. Article 8 sets out the general principle that before making a decision, the deciding organ must give the parties the opportunity to express their opinion on all relevant facts and circumstances. According to Article 10, the deciding organ is to act and decide upon the matter independently.

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

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

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

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

### **3. Laws in force in the Federation of Bosnia and Herzegovina**

#### **(a) The Law on Abandoned Apartments**

41. The Law on Abandoned Apartments was originally issued on 15 June 1992 as a decree with force of law. It was adopted as a law on 1 June 1994 and amended various times (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter “OG R BiH” - no. 6/92 as amended). It governed the re-allocation of occupancy rights over socially owned apartments that had been abandoned.

42. 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.

43. 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.

#### **(b) The Law on Cessation of Application of the Law on Abandoned Apartments**

44. 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 (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter “OG FBiH” - no. 11/98 as amended).

45. 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).

46. 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).

47. 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).

#### **(c) The Law on Administrative Proceedings**

48. 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”).

### **C. Oral evidence received at public hearing**

### **Amicus curiae**

49. The Office of the High Representative, appearing as *amicus curiae* at the public hearing before the Chamber, was represented by Mr. Matthew Hodes, Judicial Reform Coordinator at that Office. Mr. Hodes first stated that it was clear that Annex 2 of the General Framework Agreement is the primary source of resolution of disputes relating to the Inter-Entity Boundary Line. Mr. Hodes drew attention to the distinction between amendments to the Inter-Entity Boundary Line, provided for in Article II of Annex 2, and implementation, provided for in Article IV of Annex 2. Mr. Hodes stated that in relation to Article IV of Annex 2, the SFOR Commander has the authority to decide upon the location of the Inter-Entity Boundary Line. Article II concerned situations of potential agreements between the Entities relating to alterations to the line. The view of the Office of the High Representative was that the current dispute resolution mechanisms provided for in the General Framework Agreement provided sufficient means to resolve the dispute concerning the location of the Inter-Entity Boundary Line in Dobrinja. The General Framework Agreement did not provide the High Representative with the authority, responsibility or right to make decisions concerning the delineation of the maps to include the Inter-Entity Boundary Line.

## **IV. COMPLAINTS**

50. The applicant claims that her rights as guaranteed by the Human Rights Agreement in Annex 6 to the General Framework Agreement have been violated as a result of her inability to return to her prewar home. In particular, she complains of violations of her right to respect for her home, as guaranteed by Article 8 of the Convention, and of her right to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. The applicant also specified her claims in relation to each respondent Party, which claims are set out below.

### **1. Bosnia and Herzegovina**

51. The applicant claims that Bosnia and Herzegovina has, under Article III of the General Framework Agreement, undertaken an obligation to promote the fulfilment of Annex 2 to that agreement but that it has failed to fulfil this obligation. In addition, she claims that, regardless of which Entity her apartment is situated in, it is in any event within the territory of Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina guarantees a wide range of rights, including the right to respect for one's home, to all persons within its territory and Bosnia and Herzegovina is responsible for ensuring these rights. In addition, Bosnia and Herzegovina could have brought the issue of implementation of the Inter-Entity Boundary Line before the Constitutional Court of Bosnia and Herzegovina, as this court is empowered to resolve all disputes between the Entities. However, she claims, Bosnia and Herzegovina has failed to take any action to seek to resolve the dispute and is, as a result, responsible for the violations of her rights she has suffered.

### **2. Republika Srpska**

52. The applicant claims that the Republika Srpska is responsible for violating her rights as protected by the Agreement for two reasons. Firstly, it never delivered her a decision upon her request for repossession of her apartment. Secondly, it occupies the area where the apartment is located, in contravention of Annex 2 to the General Framework Agreement. She claims that the area concerned is, according to the map appended to Annex 2 of the General Framework Agreement, part of the Federation. This is so, even though the Inter-Entity Boundary Line in the area concerned may not yet have been finally determined.

53. The applicant also complains that it would be unreasonable for her to have to return to her prewar home in the Republika Srpska, as this would involve her moving from the Federation to the Republika Srpska, thus causing many social and legal difficulties for her.

### **3. Federation of Bosnia and Herzegovina**

54. The applicant states that the Federation considers the area concerned to be within its jurisdiction *de jure*. However, it has not taken any steps to seek to secure to itself this jurisdiction *de facto*, for example by negotiating or by initiating proceedings before the Constitutional Court of Bosnia and Herzegovina. She claims that this passivity means that the Federation has failed to act in accordance with the obligations imposed upon it by the Convention and it is therefore responsible for the violations of her rights which she is suffering.

## V. SUBMISSIONS OF THE PARTIES

### 1. Bosnia and Herzegovina

55. Bosnia and Herzegovina first stated that it had requested the opinion of certain officials of Bosnia and Herzegovina itself and of its Entities on the question of the location of the Inter-Entity Boundary line in Dobrinja. These officials were Mr. Ejup Ganić, the President of the Federation, Mr. Mirko Šarović, the Vice-President of the Republika Srpska, Mr. Edhem Bičakčić, the President of the Government of the Federation and Mr. Milorad Dodik, the President of the Government of the Republika Srpska. None of these officials replied to its request.

56. Bosnia and Herzegovina, in its written observations, stated that the location of the Inter-Entity Boundary Line had not been finally determined in the area concerned. It stated that according to the map appended to Annex 2 to the General Framework Agreement, the area was within the territory of the Federation, but that this map was subject to the agreement of the parties, through a special Commission established for that purpose. It went on to point out that the failure of the Entities to agree on the final determination of the Inter-Entity Boundary Line could not result in the denial to the applicant of her rights (e.g. to respect for her home and to return to her apartment). It concluded that the applicant was entitled to return to her apartment.

57. At the public hearing before the Chamber, the agent of Bosnia and Herzegovina made the following statement:

“According to information available to us, during the discussions and negotiations in Dayton and on the occasion when the General Framework Agreement for Peace in Bosnia and Herzegovina was concluded, the Parties agreed that the territorial division within Bosnia and Herzegovina, between the Federation of Bosnia and Herzegovina and the Republika Srpska, should be based on the wartime confrontation line. The line on the original map, which was created in Dayton, does not appear to reflect the confrontation line. However, in transferring the map which was used in Dayton, the scale of which was 1:600,000, to the official map with a scale of 1:50,000, a mistake appears to have occurred. Most probably the line was moved due to technical problems which arose during the transfer of this tiny line to the larger scale map. The Paris map is legally binding and drawn onto it is an Inter-Entity Boundary Line which in all respects lies 200 metres to the west of the wartime confrontation line. As a result, a territory which is 200 metres wide and 2 kilometres long, which legally belongs to the Federation of Bosnia and Herzegovina, is *de facto* under the control of the Republika Srpska. Therefore, there are, in fact, two Inter-Entity Boundary Lines. One was *de iure* drawn on the Paris map and the other is the *de facto* line which follows the confrontation line, which is considered by people from both Entities as “a realistic division”. The *de iure* line divides two housing buildings within the territory of the Republika Srpska. The Republika Srpska obviously refuses to surrender the disputed part of the territory. Bearing in mind the above mentioned facts, and especially the legal frameworks under Annex 2 to the General Framework Agreement for Peace in Bosnia and Herzegovina, the SFOR Commander is entitled to decide on the location of the Inter-Entity Boundary Line, after consulting the Parties. In our opinion, and also according to an unofficial opinion of the Legal Department of the Office of the High Representative, it is to be noted that only consultations with the Parties are required, not their consensus, and that within the territory of Sarajevo, the SFOR Commander can adjust the separation line without consulting the Parties. Considering that the State of Bosnia and Herzegovina has no competence concerning the adjustment of the Inter-Entity Boundary Line, and bearing in mind the fact that it will be necessary in this case to establish where the applicant’s apartment is located, the Parties Federation of Bosnia and Herzegovina and



Republika Srpska, ought to have agreed on the Inter-Entity Boundary Line, as provided for by Annex 2 to the General Framework Agreement for Peace in Bosnia and Herzegovina. Since obviously neither the Federation of Bosnia and Herzegovina nor the Republika Srpska wishes to do so, in accordance with the said Annex, it is for the SFOR Commander to determine this line on his own.”

58. Bosnia and Herzegovina concluded that it did not have any competence concerning the Inter-Entity Boundary Line.

## **2. The Republika Srpska**

59. The Republika Srpska first stated that the applicant should be required to submit her application form in one of the official languages of Bosnia and Herzegovina, rather than in English.

60. It went on to state that none of the acts complained of by the applicant were the responsibility of the Republika Srpska. It pointed out that the applicant had applied to the relevant authorities of the Federation and argued that the matters complained of were the sole responsibility of that Entity.

61. In additional written observations submitted on 31 July 2000, the agent of the Republika Srpska stated that the area where the applicant's apartment is located was part of the territory of the Republika Srpska.

62. Concerning Article 6 of the Convention, the Republika Srpska claimed that the applicant had not initiated court proceedings against the failure of the relevant authorities of the Republika Srpska to decide upon her request to regain possession of her apartment. Accordingly, she had not availed herself of the domestic remedies available to her and therefore there had been no violation of her rights as guaranteed by this provision.

63. At the public hearing before the Chamber, the agent of the Republika Srpska handed a copy of a decision bearing the date 11 May 2000 (see paragraph 23 above) to the applicant.

64. Concerning Article 8 of the Convention, the Republika Srpska claimed that its organs had not taken any action to prevent the applicant from returning to her home and thereby exercising her right to respect for her home. On the contrary, by issuing the decision of 11 May 2000 (see paragraph 23 above), they had enabled her to achieve this right. The Republika Srpska further stated that there had been no violations of the rights of the applicant guaranteed by the Convention.

## **3. Federation of Bosnia and Herzegovina**

65. In its written observations on the admissibility and merits of the application, the Federation first contested the admissibility of the application. It stated that the applicant had not exhausted the domestic remedies available to her, for example by initiating an administrative dispute against the failure of the relevant organ to decide upon her request to regain possession of her apartment.

66. Concerning the merits of the application, the Federation stated that there had been no violation of the rights of the applicant as guaranteed by Article 8 of the Convention, as it had not been responsible for any action which has prevented her from returning to her apartment. It stated that it had allowed, through its legislation, all persons who had lost possession of their homes to regain possession of those homes.

67. Concerning Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the Federation stated that it was not responsible for any violations of the rights of the applicant that she may have suffered.

68. The Federation also stated that the area where the applicant's apartment is located was, under the General Framework Agreement, part of its territory.

69. At the public hearing before the Chamber, the agent of the Federation withdrew the previous objections of that Entity to the admissibility of the application and suggested that it be declared admissible against all three respondent Parties. The agent said that it was clear that there were no

effective domestic remedies available to the applicant. This was because, although her apartment is, *de jure*, in the Federation, it was, *de facto*, controlled by the Republika Srpska and therefore there was no prospect of the applicant actually regaining possession of the apartment.

70. The agent then gave the views of her Government on the merits of the case. She reiterated the view of her Government that the demarcation of the Inter-Entity Boundary Line was settled by the General Framework Agreement, particularly Annex 2. She stated that any changes to the agreed demarcation line are to be made by agreement between the Parties, in consultation with the SFOR Commander. In addition, SFOR was responsible for ensuring compliance by the Parties with their obligations concerning the Inter-Entity Boundary Line, which in this case it had failed to do. The Agent of the Federation stated that it is only through the enforcement of the Inter-Entity Boundary Line by SFOR that the area concerned could be placed under the control of the Federation. It was not possible to initiate proceedings against the Republika Srpska before the Constitutional Court of Bosnia and Herzegovina, as this court did not have jurisdiction over issues arising out of Annex 2 to the General Framework Agreement.

71. The agent of the Federation claimed that in view of the above, it was clear that there had been violations of the rights of the applicant as guaranteed by Articles 6 and 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention. Concerning the responsibility for these violations, the agent of the Federation stated that it was clear that it was the Republika Srpska which was responsible and not the Federation.

72. In conclusion, the Federation suggested that the Chamber: declare the application admissible against all three respondent Parties, find the Republika Srpska responsible for violations of the rights of the applicant as guaranteed by Articles 6 and 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention, find that the Federation was not responsible for any violations of the rights of the applicant, and order the Republika Srpska, within 45 days of the decision of the Chamber, to withdraw all of its forces from the area concerned. It also suggested that the Republika Srpska be ordered to pay to the applicant appropriate compensation.

#### **4. The applicant**

73. The applicant maintained her submissions contained in her application.

74. Concerning the argument of the Federation that she had not exhausted the domestic remedies available to her, the applicant stated that there were no effective domestic remedies available to her and that therefore she could not be required to exhaust them.

75. Concerning the arguments of the Republika Srpska, the applicant first claimed that she had never received the decision of 11 May 2000 (see paragraph 23 above) and was unaware of its existence. Therefore, she was in no position to seek its enforcement. She contested the claim of the Republika Srpska that it was legally entitled to occupy the area concerned, as it was clear from the General Framework Agreement and its relevant Annexes and Appendices that that area was part of the Federation.

76. The applicant maintained that Bosnia and Herzegovina, as an internationally recognised state, was responsible for the violations she complains of, as these matters had occurred within its territory. She argued that the passivity of Bosnia and Herzegovina constituted in itself a violation of her rights.

### **VI. OPINION OF THE CHAMBER**

#### **A. Admissibility**

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

## **1. Bosnia and Herzegovina**

78. Bosnia and Herzegovina does not object to the admissibility of the application against it on any ground.

79. The Chamber notes that the competencies of Bosnia and Herzegovina are set out in Annex 4 to the General Framework Agreement, entitled "Constitution of Bosnia and Herzegovina". Under Article III of Annex 4, it is stated that any matters not specifically reserved to Bosnia and Herzegovina are within the power of the Entities. The powers of Bosnia and Herzegovina do not include, for example, housing issues or the return of displaced persons and refugees to their prewar homes. Although the question of the responsibility of Bosnia and Herzegovina for the matters complained of thus arises, the Chamber considers it appropriate to examine the case as against Bosnia and Herzegovina on the merits.

## **2. The Republika Srpska**

80. The agent of the Republika Srpska first states that the applicant should be required to submit her application in one of the official languages of Bosnia and Herzegovina, i.e. Bosnian, Serbian or Croatian. The Chamber notes, however, that the official languages before it are not only those three languages, but also English (Rule 30(1) of the Chamber's Rules of Procedure). Applicants to the Chamber are therefore entitled to submit applications in English.

81. The agent then contests the admissibility of the application on the ground that the application did not raise any issues that are within its responsibility. The Chamber notes, however, that it is not disputed that the Republika Srpska is exercising effective control over the area in which the applicant's apartment is located. It observes in addition that the Republika Srpska alleges that that area is properly within its territory and apparently considers itself entitled to issue a decision restoring to the applicant her home.

82. The Chamber is of the opinion that the responsibility of a Party to the Agreement may be engaged by acts of its authorities which produce effects outside its own boundaries. The European Court of Human Rights affirmed this principle in *Loizidou v. Turkey* (Preliminary objections, judgment of 23 March 1995, Series A no. 310), where it held as follows:

"In this respect the Court recalls that, although Article 1 sets limits on the reach of the Convention, the concept of "jurisdiction" under this provision is not restricted to the national territory of the High Contracting Parties. According to its established case-law, for example, the Court has held that the extradition or expulsion of a person by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention. (...) In addition, the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory...."

83. Applying this reasoning in the present case, *mutatis mutandis*, the Chamber concludes that, regardless of whether the area where the applicant's apartment is located is in fact on the Republika Srpska side of the Inter-Entity Boundary Line, the responsibility of the Republika Srpska is engaged by virtue of its effective occupation of that area. The preliminary objection to the effect that the Republika Srpska is not responsible for the events complained of must therefore be rejected.

83. The Chamber then notes that the applicant first sought to regain possession of the apartment by applying to the authorities of the Republika Srpska on 26 April 1999 (see paragraph 22 above).

85. The questions whether any effective remedies are available to the applicant and whether she has exhausted them must be considered.

86. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but in practice,

failing which they will lack the requisite accessibility and effectiveness. ... (M)oreover, ... in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.”

87. The Chamber notes that the applicant has applied under the appropriate law in the Republika Srpska to regain possession of the apartment. She did not receive a decision within the prescribed time-limit (see paragraph 22 above) and a copy of a decision bearing the date 11 May 2000 was only handed to her by the agent of the Republika Srpska at the public hearing before the Chamber on 7 September 2000, nearly four months after it was purportedly adopted. The applicant has not taken any steps provided for by the law of the Republika Srpska to seek to have this decision enforced.

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

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

90. In the present case the Chamber considers that, in view of the failure of the authorities of the Republika Srpska to adhere to the time-limits for issuing decisions, and of their failure to deliver the eventual decision, which bears the date 11 May 2000, to the applicant in accordance with the applicable legal provisions, the remedies available to her in the Republika Srpska cannot be considered to have been effective in the present case. Therefore, it cannot be found that the application, in so far as it is directed against the Republika Srpska, is inadmissible on the ground that she failed to exhaust them.

### **3. The Federation of Bosnia and Herzegovina**

91. Having originally contested the admissibility of the application against it on grounds of non-exhaustion of domestic remedies, the Federation, at the public hearing before the Chamber, requested the Chamber to declare the case admissible as against all three respondent Parties. While this request cannot bind Bosnia and Herzegovina and the Republika Srpska, the Chamber will declare the case admissible in its entirety as against the Federation.

### **4. Conclusion as to admissibility**

92. Accordingly, the application is to be declared admissible in its entirety as against all three respondent Parties in relation to the applicant's right to respect for her home, as guaranteed by Article 8 of the Convention, and also in relation to Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 thereto.

## **B. Merits**

93. Under Article XI of the Agreement the Chamber must address the question whether the facts established above disclose a breach by the respondent Parties of their obligations under the Agreement.

### **1. Article 8 of the Convention**

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

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

95. The Chamber will consider the case primarily under this provision, as the case mainly concerns the inability of the applicant to return to her home.

96. The Chamber notes that the applicant lived in the apartment from 1988 until June 1992, when she was forced to leave it due to constant shelling and consequent fears for her safety. 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. *Kevešević*, decision on admissibility and merits delivered on 10 September 1998, paragraph 42, Decisions and Reports 1998). The Chamber therefore considers that the apartment is the applicant’s “home” for this purpose.

**(a) Bosnia and Herzegovina**

97. The Chamber will first consider the responsibility of Bosnia and Herzegovina under this provision.

98. It is clear that Bosnia and Herzegovina is not responsible for the events leading up to the loss by the applicant of possession of her home. In any event, even if it were, any actions in this regard would be outside the competence of the Chamber *ratione temporis*. In addition, under the law as it stands, Bosnia and Herzegovina has no competence *stricto sensu* in relation to the issue of allowing persons who lost possession of their homes during the war to regain possession of those homes. This issue is within the competence of the Entities, and those bodies have established legislative and practical structures to deal with this difficult and crucial task.

99. The question does arise, however, whether Bosnia and Herzegovina, which is responsible for securing the highest standard of human rights, bears any responsibility for the alleged failure of its component Entities, the Federation and the Republika Srpska, to comply with their obligations, in this case to secure to the applicant the rights she is guaranteed under the Constitution of Bosnia and Herzegovina and both Entities, i.e. the right to respect for her home.

100. The Chamber notes that pursuant to Article I of the Human Rights Agreement, to which the Entities are Parties together with the State, the Entities are under separate and individual obligations to secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms. In addition, as noted, the limited and clearly defined scope of responsibilities of Bosnia and Herzegovina as currently set out in the Annex 4 Constitution does not include the matters raised in the application and there is no action which Bosnia and Herzegovina is empowered to take. In these circumstances the Chamber considers that in the present case it should not hold Bosnia and Herzegovina responsible under the Human Rights Agreement for any violation of the rights of the applicant under Article 8 of the Convention.

**(b) The Republika Srpska**

101. As noted above (see paragraphs 22-23 above), the applicant initiated administrative proceedings seeking to regain possession of her apartment. However, the decision dated 11 May 2000 notwithstanding, these proceedings have been unsuccessful to date and the applicant has not yet regained possession of the apartment. The Chamber accordingly finds that the applicant has been unable to regain possession of her apartment due to the failure of the authorities of the Republika Srpska to deal effectively with her application in this regard, which she introduced before the authorities of the Republika Srpska in April 1999. Therefore, the Republika Srpska is responsible for an interference with the right of the applicant to respect for her home.

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

103. As recalled above, for an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be “in accordance with the law”, serve a “legitimate aim” and be “necessary in a democratic society” in order to further that aim.

104. The Chamber notes that, in accordance with the appropriate law in force in the Republika Srpska (see paragraph 29 above), the relevant authority was required to issue a decision on a request within 30 days of its receipt. The applicant filed her request in April 1999. However, the Commission in Srpska Ilidža did not issue a decision on her request until, apparently, May 2000, over one year later. In addition, it did not make this decision available to the applicant until the public hearing before the Chamber in September 2000. The Republika Srpska has not sought to put forward any reasons for this delay and has not sought to prove that it took any steps at all to seek to deliver the decision to her, e.g. by producing records of attempted delivery of the decision. Accordingly, also the actions of the Commission have not been “in accordance with the law”.

105. Consequently, there has been a violation by the Republika Srpska of the right of the applicant to respect for her right to her home as guaranteed by Article 8 of the Convention.

### **(c) The Federation of Bosnia and Herzegovina**

106. The applicant has initiated administrative proceedings before the relevant organs of the Federation, seeking to be enabled to regain possession of her apartment. As set out at paragraph 21 above, these proceedings are still continuing, despite the legal time-limits for their resolution having expired. The question arises whether this failure of the authorities of the Federation to act constitutes a violation of the rights of the applicant as guaranteed by Article 8 of the Convention.

107. The European Court of Human Rights has found that “although the object of Article 8 (of the Convention) is essentially that of protecting the individual against arbitrary interference by the public authorities, it may also give rise to positive obligations” on States to ensure respect for the rights it guarantees (see, e.g., *Velosa Barreto v. Spain*, judgment of 21 November 1995, Series A no. 332 paragraph 23). The Chamber considers that the obligation on the Federation to secure the applicant’s right to respect for her home requires it to not only put in place a legislative regime enabling persons who lost possession of their homes to regain possession of them, but also to ensure that it acts in accordance with that regime in individual cases, including that of the applicant. Even though the Federation has no *de facto* power in the area where the applicant’s apartment is located and would most likely not be in a position to enforce any decision, it is nevertheless required to act in accordance with its own law in determining the applicant’s claims. As noted in the previous paragraph, the Federation has not done so as the applicant’s proceedings in this regard are still pending, despite the legal time-limits for the issuance of a decision having elapsed. The Chamber therefore considers that the Federation has failed to comply with the positive obligation imposed upon it by Article 8 and therefore it has violated the rights of the applicant under this provision.

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

108. The applicant complains of a violation of her right to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. This provision 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.”

109. The Chamber has previously held as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

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

110. Accordingly, the applicant’s occupancy right over the apartment constitutes a “possession” for the purposes of Article 1 of Protocol No. 1 to the Convention.

111. Article 1 of Protocol No. 1 contains three rules. The first, which is set out in the first sentence, is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects it to the requirement of the general interest and domestic law (see, among other authorities, case no. CH/96/29, *Islamic Community (No. 1)*, decision on admissibility and merits of 11 June 1999, Decisions January-July 1999).

**(a) Bosnia and Herzegovina**

112. In its examination of the case under Article 8 of the Convention, the Chamber has found that Bosnia and Herzegovina has no competence in relation to the matters raised in the application and that therefore it cannot be held responsible for any violations of the rights of the applicant under that provision. For the same reasons, the Chamber finds that Bosnia and Herzegovina cannot be held responsible for any violation of the rights of the applicant as guaranteed by Article 1 of Protocol No. 1 to the Convention.

**(b) Republika Srpska and the Federation of Bosnia and Herzegovina**

113. The Chamber considers that the actions of the two Entities also constitute an interference with the applicant’s right to the peaceful enjoyment of her possessions, to be considered under the rule contained in the first sentence of Article 1 of Protocol No. 1 to the Convention (see, e.g., European Court of Human Rights, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, A 44).

114. In respect of the Republika Srpska, the Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the interference with the right of the applicant to respect for her home cannot be justified under the second paragraph of that Article. The Chamber finds that the interference with her right to peaceful enjoyment of her possession, i.e. her occupancy right, cannot be justified either.

115. In respect of the Federation, the Chamber finds that the failure of the relevant authorities of that Entity to act in accordance with the law constitute an interference which cannot be justified.

116. Accordingly, the Chamber finds that both the Federation and Republika Srpska have violated the right of the applicant to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

**3. Article 6 of the Convention**

117. The applicant did not complain of a violation of her rights as guaranteed by Article 6 paragraph 1 of the Convention. The Chamber raised it of its own motion when transmitting the case to the respondent Parties. This provision reads as follows:

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

118. The Chamber has already decided that the case primarily raises issues under Article 8 of the Convention. It considers that, in light of the findings it has made in respect of that Article, and also in respect of Article 1 of Protocol No. 1 to the Convention, it is not necessary to examine the case under Article 6 of the Convention.

#### **4. Article 13 of the Convention**

119. The applicant did not complain of a violation of her rights as guaranteed by Article 13 of the Convention. The Chamber raised it of its own motion when transmitting the case to the respondent Parties. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violations has been committed by persons acting in an official capacity.”

120. The Chamber considers that, in view of the findings it has already made in respect of Article 8 of the Convention and Article 1 of Protocol No. 1 thereto, that it is not necessary in the present case to examine the application under this provision.

#### **VII. REMEDIES**

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

122. In her claim for compensation submitted on 25 October 1999, directed against the Republika Srpska and the Federation, the applicant submitted a list of personal property which was in the apartment at the time she vacated it. She stated that she did not know which, if any, of these items remained in the apartment and requested that she be allowed to submit a claim for monetary compensation in this regard once she regained possession of it.

123. The applicant submitted a further claim for compensation, which was received by the Chamber on 15 August 2000. She had been requested to submit any claim for compensation she wished to make against Bosnia and Herzegovina. In this second claim, the applicant requested that the Chamber order the current occupants of her apartment to be evicted, order her reinstatement into the apartment, order the Federation to refrain from evicting her from the apartment she currently occupies until she was enabled to regain possession of her apartment, order the respondent Party or Parties found by the Chamber to have violated her rights under the Agreement to pay to her the sum of 25,000 Convertible Marks (*Konvertibilnih Maraka*, “KM”) by way of compensation for non-pecuniary damage and order those Parties to pay her compensation for pecuniary damage to her personal property. She also suggested to the Chamber that if it deemed it necessary, it should order the Republika Srpska to swiftly cease and desist from exercising control over the Dobrinja I area and to cede such control to the Federation, to order the Federation to take all necessary steps to seek to obtain *de facto* control over the Dobrinja I area, including by initiating proceedings before the Constitutional Court of Bosnia and Herzegovina, and to order Bosnia and Herzegovina to take all steps necessary to assist the Entities in achieving the transfer of control of the area to the Federation, either by initiating proceedings before the Constitutional Court or by adopting legislation. Finally, she requested that the Chamber order the Republika Srpska to present evidence on the current state of the apartment, including an inventory of the personal property contained in it. She purports to reserve her right to submit a finalised compensation claim on the receipt of such evidence.

124. Bosnia and Herzegovina did not submit observations on the claim for relief made by the applicant.

125. The Federation, in its observations on the applicant’s claim for compensation, stated that in so far as that claim was directed against the Federation it should be rejected. This was because it was not responsible for the matters the applicant complains of and had not caused the damage alleged. The Federation also pointed out that the claim for pecuniary damages was unspecified.



126. The Republika Srpska also stated that it was not responsible for the matters the applicant complains of and therefore suggested that it be rejected as manifestly ill-founded. Like the Federation, it also observed that the claim for pecuniary damages was unspecified.

127. None of the respondent Parties submitted observations on the second claim for compensation submitted by the applicant, although it was transmitted to them.

128. The Chamber firstly considers it appropriate to order the Republika Srpska to enable the applicant to regain possession of the apartment without further delay.

129. In the circumstances of the present case, the Chamber considers it appropriate to award the applicant monetary compensation for moral damages against the Republika Srpska and the Federation of Bosnia and Herzegovina. This is due to the suffering she has undoubtedly undergone as a result of her inability to return to her apartment. The Chamber considers that, in the particular circumstances of the case, and also bearing in mind the previous jurisprudence of the Chamber on the issue of monetary compensation for moral damages in cases involving the return of persons to their pre-war homes (see, e.g., CH/98/698, *Jusufović*, decision on admissibility and merits delivered on June 2000, Decisions January-June 2000), an appropriate amount to award under this head is 2,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") to be paid by the Republika Srpska and KM 1,000 to be paid by the Federation. The award in the present case is higher than in certain other cases due to the fact that two respondent Parties, the Republika Srpska and the Federation, have been found by the Chamber to have violated the rights of the applicant, and also due to the increased difficulties suffered by the applicant as a result of the fact that her apartment is located in an area disputed between the entities, thus making it even more difficult for her to regain possession of the apartment and even to know to whom to apply in this regard.

130. Concerning the claim of the applicant for pecuniary compensation for damage to her personal property, the Chamber notes that it has previously held on a number of occasions that such damage cannot be imputed to the respondent Party, in the absence of evidence that such damage has been caused by the respondent Party or by persons for whose actions it is responsible (see, e.g. case no. CH/96/27, *Bejdić*, decision on the claim for compensation delivered in writing on 22 July 1998, paragraph 11, Decisions and Reports 1998). Accordingly, this part of the applicant's claim must be dismissed.

131. The Chamber will order the Federation and the Republika Srpska to report to it one month after the date of delivery of this decision on the steps they have taken to comply with it.

## **VIII. CONCLUSIONS**

132. For the above reasons, the Chamber decides,

1. by 12 votes to 2, to declare the application admissible against Bosnia and Herzegovina;
2. by 11 votes to 3, to declare the application admissible against the Federation of Bosnia and Herzegovina;
3. unanimously, to declare the application admissible against the Republika Srpska;
4. by 7 votes to 7, with the casting vote of the President, that Bosnia and Herzegovina is not responsible for any violation of the rights of the applicant as guaranteed by the Human Rights Agreement contained in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

5. by 13 votes to 1, that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment at Miroslava Krleža 12/I, Sarajevo, involves a violation of the applicant's right to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
6. by 9 votes to 5, that the continuing failure of the authorities of the Federation to act in accordance with its own laws in connection with the request of the applicant to regain possession of the apartment at Miroslava Krleža 12/I, Sarajevo, involves a violation of her right to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;
7. by 13 votes to 1, that the failure of the authorities of the Republika Srpska to enable the applicant to regain possession of the apartment at Miroslava Krleža 12/I, Sarajevo, involves a violation of the applicant's right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
8. by 9 votes to 5, that the continuing failure of the authorities of the Federation to act in accordance with its own laws in connection with the request of the applicant to regain possession of the apartment at Miroslava Krleža 12/I, Sarajevo, involves a violation of her right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;
9. unanimously, that it is not necessary to examine the application under Article 6 of the Convention;
10. by 12 votes to 2, that it is not necessary to examine the application under Article 13 of the Convention;
11. by 11 votes to 3, to order the Republika Srpska swiftly, and in any event not later than 8 March 2001, to take all necessary steps to enable the applicant to regain possession of the apartment located at Miroslava Krleža 12/I, Sarajevo;
12. by 11 votes to 3, to order the Republika Srpska to pay to the applicant, not later than 8 March 2001, the sum of KM 2,000 (two thousand Convertible Marks) by way of compensation for moral damage suffered;
13. by 8 votes to 6, to order the Federation to pay to the applicant, not later than 8 March 2001, the sum of KM 1,000 (one thousand Convertible Marks) by way of compensation for moral damage suffered;
14. by 10 votes to 4, that simple interest at an annual rate of 4% (four percent) will be payable on the amounts, or any unpaid portion thereof, awarded in conclusions 12 and 13 above outstanding to the applicant at the end of the period set out in those conclusions for such payment;
15. by 12 votes to 2, to reject the remainder of the applicant's claims for remedies; and
16. by 11 votes to 3, to order the Republika Srpska and the Federation to report to it not later than 8 March 2001 on the steps taken by them to comply with the above orders.

(signed)  
Peter KEMPEES  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the Chamber

Annexes	Separate opinion of Mr. Manfred Nowak, joined by Messrs. Dietrich Rauschnig and Hasan Balić
	Dissenting opinion of Mr. Viktor Masenko-Mavi and statement of Messrs. Želimir Juka and Mato Tadić

## **ANNEX I**

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the separate opinion of Mr. Manfred NOWAK, joined by Mr. Dietrich RAUSCHNING and Mr. Hasan BALIĆ.

### **SEPARATE OPINION OF MR. MANFRED NOWAK, JOINED BY MR. DIETRICH RAUSCHNING AND MR. HASAN BALIĆ**

1. Although I partly voted with the majority, I strongly disagree with the reasoning of the Chamber in this case. The applicant claims that her human rights (in particular her right to respect for her home) have been violated by the fact that her apartment is located in a disputed area. She cannot effectively return to her apartment in Dobrinja I since the RS authorities, which exercise *de facto* control, are not competent, and the Federation authorities, which claim *de jure* authority, are not capable of providing her with an effective remedy. She holds all three Bosnian Parties accountable for not having taken sufficient steps to solve this territorial dispute which is the root cause of her human rights violations.

2. I agree with the majority of the Chamber that it is not up to this judicial body to solve political issues underlying this territorial dispute. Whether there occurred a mistake when the Inter-Entity

Boundary Line (IEBL) was drawn on the map in Dayton or Paris, as the agent of Bosnia and Herzegovina stated during the public hearing (see paragraph 57), and whether this mistake provides the Republika Srpska with a legitimate political claim to have the IEBL adjusted accordingly or not, is a political question which should be decided by the Bosnian Parties in the context of the proper arbitration procedures with the assistance of the international community. The Chamber should, however, decide on the basis of the relevant binding legal provisions in the Dayton Peace Agreement (DPA) whether this unfortunate situation amounts to a violation of human rights, which of the respondent Parties is to be held responsible and which remedies should be ordered. The question of the exact location of the IEBL is, therefore, a preliminary question which the Chamber should have addressed. In answering this question the Chamber should only have taken into account what the DPA provides and not what it should have provided.

3. During the public hearing and on the basis of the relevant documents and maps it has been established beyond reasonable doubt that the IEBL in Dobrinja I and IV has been drawn 200 metres to the west of the Cease-Fire Line. As the representative of Bosnia and Herzegovina, therefore, rightly observed, the area in which the apartment of the applicant is located, legally belongs to the Federation but *de facto* is under the control of the Republika Srpska. As long as the IEBL is not adjusted in accordance with the relevant procedures provided for under Annexes 2, 5 or 10 of the DPA, the Parties are under an obligation to comply with the presently binding IEBL-situation. The possible failure of the IFOR (SFOR) Commander to carry out his obligations under Article IV of Annex 2, to determine, adjust and mark the exact delineation of the IEBL in Sarajevo cannot be used by the Bosnian Parties as an excuse for not complying with the binding IEBL-situation.

4. Under Article IV(3)(a) of Annex 1A, the authorities of the Republika Srpska were under an obligation to withdraw from the disputed area within 45 days after the entry into force of the DPA. The fact that they still occupy this area 5 years after that date is, therefore, a violation of Article III of the General Framework Agreement by the Republika Srpska. This illegal occupation of parts of the Federation territory has in fact deprived the applicant of her right to have the competent authorities, i.e. Federation authorities, decide on her claim to regain possession of her apartment and to enable her to return to it. Consequently, the Republika Srpska bears the primary responsibility for the violations of the applicant's rights to the protection of her home (Article 8 of the Convention), her possessions (Article 1 of Protocol No. 1 to the Convention) and to an effective remedy (Article 13 of the Convention). The reasoning of the majority of the Chamber, i.e. that the delay in the administrative proceedings before the Republika Srpska authorities and the improper way of delivering a decision to the applicant constituted the violation of her human rights (see paragraphs 101-105), in my opinion simply misses the point.

5. The Republika Srpska authorities are, however, not the only ones responsible for this unfortunate situation. The Federation authorities, who claim the *de jure* authority over the disputed territory, have failed to issue a decision on the applicant's request. Even if it is unlikely that a decision which affirms her right to regain possession of her apartment could easily be enforced on territory under the Republika Srpska control, the Federation authorities are in my opinion under an obligation to take all possible steps to apply Federation law and to protect human rights of all persons living on Federation *de jure* territory. Just to refrain from acting in accordance with the law is in my opinion a violation, by omission, of the Federation's obligation to protect human rights.

6. This brings me to the most important point which actually concerns all three Bosnian Parties. It is in my opinion unacceptable, from a human rights point of view, that none of the three Parties has for a period of five years after the entry into force of the DPA taken any effective steps to bring about a solution to this territorial dispute. There are various procedures available for arbitration or a judicial settlement.

7. The passivity of all three Bosnian Parties (as well as of the international community, above all IFOR and SFOR) has led to a situation where the applicant, like many other persons in a similar situation, is actually deprived of her right to an effective remedy before competent Bosnian authorities providing for a solution to ongoing human rights violations. I am, therefore, of the opinion that the State of BiH as well as both Entities violated in the present case the right to an effective remedy in Article 13 of the Convention in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. Consequently, the remedies ordered by the Chamber fail to provide a proper solution to the issue at stake and/or an effective redress to the applicant.

(Signed)  
Manfred NOWAK

(Signed)  
Dietrich RAUSCHNING

(Signed)  
Hasan BALIĆ

## **ANNEX II**

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Viktor MASENKO-MAVI.

### **DISSENTING OPINION OF MR. VIKTOR MASENKO-MAVI**

1. I have the misfortune to disagree with the majority in the present case. With all respect to the reasoning of the majority and the conclusions reached by it, I have to admit that for several reasons, for me the approach taken by the majority seems to be rather unconvincing, and to some extent, if I may say so, confusing.

2. The applicant in the case is a pre-war occupancy right holder, who was evicted from her apartment located in a residential district of Sarajevo called Dobrinja in 1992. Since that time she has been living in another residential area of Sarajevo, controlled by the Federation, as a temporary occupant of an apartment of another displaced person. In June 1998 the applicant decided to return to her pre-war apartment in Dobrinja and started different proceedings aimed at securing her return. In the course of these proceedings, it was revealed that there is a dispute between the two entities (the Republika Srpska and the Federation) over the residential area known as Dobrinja. Both of the entities claim jurisdiction over the area. (The area where the applicant's pre-war apartment is located is presently under the control of Republika Srpska). In particular the Federation and also the State

insist that the present Inter-Entity Boundary Line “had not been finally determined in the area concerned due to “technical mistakes” connected with the use of maps with different scales in Dayton and in Paris”, that is in other words, despite the *de facto* control of the area by Republika Srpska, it *de jure* belongs to the Federation.

3. It has been evident from the very beginning of the proceedings in the case before the Chamber that the respondent parties tried to drag the Chamber into a dispute related to the Inter-Entity Boundary Line, which is clearly not the subject-matter of the complaint. At the very heart of the complaint lies first of all a human rights violation: the violation of the applicant’s right to return to her pre-war home. Luckily enough the Chamber at the end decided to give up its involvement in the territorial dispute between the Entities and to consider the case purely from the point of human rights. Nevertheless, I cannot accept the majority’s opinion for the following reasons.

4. My first misgiving is connected with the problem of the responsibility of the State of Bosnia and Herzegovina. The majority refuses to acknowledge any responsibility of the State. I have already pointed out in another dissenting opinion my reservations about the restrictive interpretation of the responsibility of the State. But in this particular case it is even more clear that this kind of reasoning of the Chamber, which is aimed at absolving or stripping from the State totally its human rights obligations accepted under the Dayton Peace Agreement, is simply an unacceptable one. The majority bases its argument on a constitutional provision related to the division of responsibilities between the State and the Entities, which has nothing to do with the responsibilities of the State in the domain of the protection of human rights. Save for a few exceptions, the majority considers that this Article of the Constitution is a very convenient tool of not involving the State in the cases before the Chamber. That might be true, but at the same time confusing. If this Article is the only relevant provision in the Constitution of the State (see paragraph 25 of the present decision), then the State has nothing to do with the protection of human rights, since human rights issues are not listed among the matters “within the responsibilities of the institutions of Bosnia and Herzegovina”. The applicant in her complaint claimed that she, as a citizen of the State, is entitled to the protection of those rights specified in paragraph 3 of Article II of the Constitution (the right to home and the right to property). Moreover, the agent of the State has also admitted that the State should secure the highest level of human rights and that the applicant’s case is also a human rights case (see the verbatim record of the hearing, at page 11). The majority simply ignores these facts for the sake of convenience. One can hardly understand why the majority has declared the complaint admissible against the State. In paragraph 79 of the decision it is stated that the “powers of Bosnia and Herzegovina do not include, for example, housing issues or the return of displaced persons to their pre-war homes”. And this sentence is immediately followed by another one, which states without any substantiation that “although the question of responsibility of Bosnia and Herzegovina for the matters complained of thus arises”. Why does it arise, if the matters complained of are not within the powers of the State? I would like to point out that the whole argument in this paragraph is just wrong. The applicant is complaining not about the housing matters, but about the violation of her right to home secured clearly by the Constitution. Moreover, to state that the issue of the return of displaced persons has nothing to do with the competence or obligations of the State is also, to put it mildly, a rather strange conclusion. The Constitution of the State, in paragraph 5 of Article II, recognises the right of displaced persons to return freely to their homes, that is the State is under direct constitutional obligation in that respect. And one has to take into account also that at the level of the State there is a special institution, the Ministry for Human Rights and Refugees, which is responsible, *inter alia*, for the return of displaced persons (see the First Report of the Ministry, dated October 2000).

5. To sum up, the matters complained of by the applicant are clearly within the responsibility of the State, and it is not true that “there is no action which Bosnia and Herzegovina is empowered to take” (see paragraph 100). The State was aware of the difficulties faced by the applicant and hundreds of other of its citizens due to the territorial dispute between the Entities, and it should have taken steps (such as legislative or judicial, including arbitration or raising the issue before the Constitutional Court) for securing those rights acknowledged by it in the Constitution. For this omission the State should have been found responsible.

6. Secondly, I cannot agree with the majority in its conclusions related to the responsibility of the Federation. How can one find the Federation responsible, which has taken no action whatsoever indicating a violation of the applicant’s right to home and property, which has no competence at all for the reinstatement of the applicant in an apartment located in an area controlled by Republika Srpska?

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On the contrary, it has provided a temporary shelter for the applicant for several years. The only mistake or omission which it has "committed" is the fact, that it has not informed the applicant from the very beginning that she started her proceeding against the wrong respondent party.

(Signed)  
Viktor MASENKO-MAVI

#### **STATEMENT**

We join the above dissenting opinion insofar as it refers to the responsibility of Bosnia and Herzegovina.

(Signed)  
Mato TADIĆ

(Signed)  
Želimir JUKA