DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/00/3546

Dževdet TUZLIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 January 2001 with the following members present:

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

Mr. 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 is the owner of an apartment at ulica Maka Dizdara 7 in Sarajevo. During the war the applicant left the apartment due to the hostilities. On 22 September 1993, the City Secretariat for Housing Affairs declared the apartment abandoned under the Law of Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina-hereinafter "OG RbiH"-, nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). On 13 October 1993 the same authority allocated the apartment to Z.K. for temporary use. After the hostilities ended, in July of 1996, the applicant appealed against the decisions declaring his apartment abandoned and allocating it to Z.K. His occupancy right was eventually confirmed by a decision under the Law on Cessation of Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina-hereinafter-OG FBiH, No. 11/98 "the new Law on Abandoned Apartments") on 24 June 1998. However this decision has not been enforced.

2. In November of 1998 the applicant was able to register his ownership over the apartment. The applicant's rights as the owner of real property were eventually confirmed by a decision under the Law on Cessation of Application of the Law on Abandoned Real Property owned by Citizens (OG FBiH), nos. 11/98, 29/98, 27/99 "the new Law on Abandoned Real Property") on 6 September 1999. However, this decision has also not been enforced.

3. This case raises issues under Articles 8 and 6 of the European Convention on Human Rights ("the Convention") and under Article 1 of Protocol No. 1 to the Convention. The applicant seeks repossession of his apartment and compensation.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 21 January 2000 and registered on the same day.

5. On 24 June 2000 the applicant informed the Chamber that the application to the Chamber raises issues substantially different from those raised before the Commission for Real Property Claims of Displaced Persons and Refugees (the Annex VII Commission). Specifically, the applicant pointed out his complaints regarding the length of proceedings.

6. On 6 July 2000 the Chamber invited the Federation of Bosnia and Herzegovina to submit observations in writing on the admissibility and merits of the case. The Federation submitted its observations on 12 September. In accordance with the Chamber's order for the proceedings, the applicant was afforded the possibility of replying to the respondent Party's observations and submitting a claim for compensation.

7. On 20 November the applicant replied and informed the Chamber that he was seeking repossession of his apartment and compensation. He requested that the respondent Party compensate him in the amount of 300 Convertible Marks (KM) per month starting from 1 October 1997. This is the amount that the applicant is paying to live in another apartment. Additionally, he requests reimbursement of lawyer's fees in the amount of 1.200 KM.

8. On 12 and 13 January 2001 the Chamber deliberated on the admissibility and merits of the case and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The applicant is the owner of an apartment at Ulica Maka Dizdara 7 in Sarajevo based on a contract that he concluded with "Sarajevostan", a public housing enterprise with which an owner has to conclude a contract, certifying, for the purposes of proceedings under the new Law on Abandoned Real Property, that he is still the owner of the apartment. The initial purchase contract was signed in

1986. Due to the war, the applicant did not complete registration and sign the remaining paperwork until 18 November 1998. The applicant lived in the apartment from around 1986 until he left the apartment during the war due to the hostilities.

10. On 22 September 1993, the City Secretariat for Housing Affairs declared the apartment abandoned under the Law on Abandoned Apartments (OG RbiH, nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95.) On 13 October 1993 the same authorities allocated the apartment to Z.K. for temporary use.

11. Before 6 April 1992 Z.K. lived in an apartment in Sarajevo, Dobrinja IV, at Damila Pnjarca Street no. 4, over which she has an occupancy right.

12. After the hostilities ended the applicant, in July of 1996, submitted a claim for repossession of his apartment to the Town Secretariat for Housing Affairs in Sarajevo. On 1 October 1997 the Administration for Housing Affairs of the Sarajevo Canton issued a procedural decision overturning the decisions of 22 September and 13 October 1993, that had temporarily allocated the apartment to Z.K. The administration established that the applicant was the occupancy right holder over the apartment. It noted that the applicant's rights over the apartment had not yet been registered. Accordingly, upon registration in the "Sarajevostan" fund the conditions for the conclusion of the contract could be met. The administration further found that Z.K was the occupancy right holder over an apartment in Dobrijna and should be provided with housing because the dispute between the entities concerning the Inter-entity Boundary line In Dobrinja has essentially frozen the possibilities for persons wishing to return to Dobrijna IV.

13. Z.K appealed this decision to the Cantonal Ministry of Urban Planning, Housing and Communal Affairs. On 15 January 1998 the Cantonal Ministry refused the complaint as ill-founded and confirmed the first instance decision of 1 October 1997. On 10 March 1998. Z.K. commenced an administrative dispute in the Cantonal Court in Sarajevo appealing the 15 January 1998 decision. On 24 June 1998, the Cantonal Court in Sarajevo rejected the appeal, again confirming the first instance decision. Specifically, the court found that Z.K. was in fact using the apartment without legal basis under the Law on Cessation of Application of the Law on Abandoned Apartments (OG FBiH, No. 11/98) that had become effective in April of 1998.

14. Once a decision was rendered on Z.K.'s appeal, on 7 August 1998, the applicant applied to the above mentioned Cantonal Ministry for enforcement of the 1 October 1997 decision. To this day he has not received a response.

15. On 18 November 1998 the applicant concluded his contract on payment of compensation for current and investment maintenance of common parts of the apartment house with "Sarajevostan". On 25 May 1999 the applicant obtained the certificate of ownership of the apartment from "Sarajevostan". The Chamber notes that according to the contract concluded on 18 November 1998 between the applicant and "Sarajevostan", it appears that the applicant was actually the owner of the apartment as of the date of the initial contract with "Sarajevostan" of 9 May 1986. However, as the applicant had not registered his ownership over the apartment he was considered by the competent authorities as an occupancy right holder until such time as he was registered and completed the second contract.

16. On 8 February 1999, the Ombudsmen of the Federation sought to clarify and remedy Z.K.'s housing problems. Specifically, it requested information regarding the applicant's occupancy right in Dobrijna IV. On 22 February the Cantonal Ministry of Urban Planning, Housing and Communal Affairs acknowledged the applicant's occupancy right over the apartment in Dobrijna IV and stated that she was entitled to alternative accommodation for the reasons set forth in paragraph 12 above.

17. On 7 June 1999 the applicant commenced a lawsuit in the Municipal Court I in Sarajevo requesting, once again, reinstatement into his apartment. On 6 September 1999 the Municipal Court I confirmed that the applicant was the legal owner of the apartment and pursuant to the Law on Cessation of Application of the Law on Abandoned Real Property owned by Citizens (OG FBiH nos. 11/98, 29/98, 27/99, ordered the temporary user to move out of the applicant's apartment within

15 days under threat of enforcement. The Court further ordered Z.K. to pay the applicant's legal expenses in the amount of 199.00 KM.

18. On 25 October 1999 Z.K. lodged an appeal against the 6 September 1999 decision. On 20 April 2000 the Cantonal Court refused Z.K.'s appeal and confirmed the judgement of the Municipal Court I. This decision was delivered to the applicant only on 2 August 2000. On that same day, the applicant submitted a claim for enforcement. The Municipal Court issued a decision on enforcement on 9 August 2000. A "peaceful eviction" was scheduled for 15 November 2000. On 14 November 2000 Z.K. filed an objection and motion to suspend enforcement. On 15 November court officials informed the applicant of Z.K.'s objection to which he was entitled to respond. He did so forthwith.

19. Apart from the efforts described above, the applicant, on 2 December 1999, submitted a claim for reinstatement into possession of his apartment over which he is the legal owner to the Annex VII Commission. To this day, he has not received a decision.

20. In tandem with the proceedings before the Municipal Court, on 24 May 2000, the applicant applied to the Municipal Service for Administration in Housing Affairs – Center Sarajevo for reinstatement into possession of his apartment. Center Sarajeveo specifically handles situations involving owners (as distinct from occupancy right holders) of real property. The Center Sarajevo issued a decision establishing, once again, that the apartment is the property of the applicant and that Z.K's right to the apartment was terminated. The decision further stated that she was entitled to alternative accommodation, and that an appeal would not stay the execution of the decision. On 18 September 2000 the applicant submitted his request for enforcement. To this day, he has not received a response.

B. Relevant domestic law and legislation

1. The Law on Abandoned Apartments

21. The Law on Abandoned Apartments ("the old Law on Abandoned Apartments"), originally issued on 15 June 1992 as a decree with force of law, was adopted as law on 1 June 1994. It was amended on several 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.

22. 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, not relevant to the present application.

23. 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).

24. 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).

25. 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 28 December 1995). The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10 in conjunction with Article 3 paragraph 3).

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

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

27. According to the new Law on Abandoned Apartments, 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 14 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).

28. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment. (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).

29. 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 on Abandoned Apartments, i.e. on 4 July 1999 (Article 5 paragraph 1). If no claim was submitted within that time limit, the occupancy right was canceled (Article 5 paragraph 3).

30. 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.

31. 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 for housing affairs within 15 days from the date of receipt of the decision. However, an appeal has no suspensive effect (Article 8).

32. 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 on Abandoned Apartments and its amendments (Article 12).

3. The Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens

33. The Law on Temporary Abandoned Real Property Owned by Citizens (OG RbiH 11/93, 13/94) was repealed by the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens ("the new Law on Abandoned Real Property") which entered into force on 4 April 1998 and has been amended on several occasions thereafter (OG FBiH – nos. 11/98, 29/98, 27/99, 43/99).

34. The new Law on Abandoned Real Property is quite similar to the new Law on Abandoned Apartments. However, the rights of the owner are more extensive in that the new law on abandoned real property provides that owners of private property may file a claim to reclaim their property at any time. (Article 4). The authorities must decide on such claims within 30 days. If the property is occupied by an authorised temporary user, the current occupant has 90 days to vacate the property. If the property is occupied by an illegal user, or a temporary user who is not entitled to alternative accommodation, the current occupant must vacate the premises within 15 days from the date of delivery of the decision. (Article 12). An appeal against a decision ordering the current occupant to vacate the premises may be filed within 15 days from the date of receipt of the decision. However, an appeal shall not suspend the execution of the decision. (Article 13).

35. In exceptional circumstances, these deadlines may be extended up to one year, but only if the authorities demonstrate to the Office of the High Representative (OHR) that other accommodation for the current occupants is not available. (Article 12)

36. If a temporary user, who has been ordered to vacate the premises, has no possibility to return to the apartment or real property in which he or she was living until April 30, 1991, and his or her housing needs are not otherwise met, the competent organ of the municipality on the territory of which he or she enjoyed the latest domicile shall, within the deadline set by the decision for his or her vacation of the property, provide him or her with an emergency accommodation or an appropriate accommodation. In no event shall the failure of the municipality to meet its obligations regarding alternative or emergency accommodation operate to delay the ability of the owner to reclaim his property (Article 7).

37. The competent administrative body shall be fined 1000 to 5000 KM for, among other offences, failing to process an eviction request because one of the parties filed an appeal against the prior decision, as set out in Article 13 of the law (Article 17c).

4. The Law on Administrative Proceedings

38. 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 administration).

5. The Law on Administrative Disputes

39. Under Article 22 paragraph 3 of the Law on Administrative Disputes (OG FBiH no. 2/98) an administrative dispute may be instituted if the administrative second instance organ fails to render a decision within the prescribed time-limit, whether the appeal to it was against a decision or against the first instance organ's silence.

IV. COMPLAINTS

40. The applicant complains that his right to peaceful enjoyment of his possessions and his home and his right to protection under the law have been violated due to the fact that in spite of commencing his repossession claim for his apartment over 4 years ago, he still cannot regain possession.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

41. The respondent Party argues that the applicant has failed to exhaust domestic remedies. Specifically, the respondent Party argues that the applicant could bring a motion to the Municipal Court I for enforcement of the Municipal Court I's judgment of 6 September 1999. Further, it argues that he could apply to a second instance organ regarding the failure of the Cantonal Ministry to respond to the applicant's request for enforcement of the Administration for Housing Affair's procedural decision of 1 October 1997.

42. As regards the merits of the case, the respondent Party argues that there has not been a violation of Article 6 as the domestic courts have issued decisions within the time limits prescribed by law. In relation to Article 8 of the Convention it states that "it is undisputed fact that the apartment at Obala Maka Dizdara no. 7 indeed is the applicant's home". However, the applicant voluntarily left his home without any influence of the respondent Party. Further, the respondent Party has issued legislation, which enables the applicant to regain possession of the home that he voluntarily left. The fact that the applicant has not exhausted domestic remedies cannot be imputed to the respondent Party.

43. In relation to Article 1 of Protocol No. 1 to the Convention the respondent Party states that the measures taken in the applicant's case were justified under paragraph 2 of that Article as they were in the public interest, having regard to the large number of refugees and displaced persons in need of housing, as a consequence of the recent war. The respondent Party implemented laws so as to accommodate the needs of refugees and displaced persons. Once again, it states that the applicant's failure to exhaust domestic remedies cannot be imputed to the respondent Party.

B. The applicant

44. In response, the applicant maintains that domestic remedies have proved to be ineffective. Specifically, he points out that he has wound his way through the domestic system for over 4 years. He has appealed to both the domestic administrative organs and the courts. Further, he points out that he has addressed international and non-governmental organisations for assistance in gaining repossession of the apartment over which he has been declared, not once but three times, the rightful owner. The domestic remedies have simply proved to be utterly and completely ineffective.

VI. OPINION OF THE CHAMBER

A. Admissibility

45. Before considering the merits of the case the Chamber must decide whether to accept the case, taking into account the criteria for admissibility set out in Article VIII (2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

46. The Chamber notes *proprio motu* that the applicant's apartment was declared abandoned prior to the entry into force of the Agreement on 14 December 1995. The Chamber observes, however, that the applicant's grievances relate to a situation which has continued up to date, namely his unsuccessful attempts to return to his pre-war dwelling. The Chamber is therefore competent *ratione temporis* to examine the case in so far as this situation has continued past 14 December 1995. In doing so the Chamber can also take into account, as a background, events prior to that date. (see no. CH/97/58, *Onić* decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999).

47. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the *Onić* case (see *supra* paragraph 38), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but (also) 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 . . . but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

48. The respondent Party essentially objects to the admissibility of the application on the ground that domestic remedies provided by the new Laws have not yet been exhausted. It is not for the Chamber to examine the new Laws in isolation, apart from the way in which they are being applied in the case before it. Accordingly, whilst the new Laws have afforded a remedy which might in principle qualify as an effective one within the meaning of Article VIII(2)(a) of the Agreement, the Chamber must ascertain whether they are, in fact, effective in practice in the case before it.

49. Specifically, the respondent Party argues that the applicant could have filed an appeal pursuant to Article 22 paragraph 3 of the Law on Administrative Disputes, with respect to the non-implementation of the administrative decision in the applicant's favour of 1 October 1997. However, the applicant is not required to bring an appeal against the administrative organ's failure to implement the administrative decision. That is simply one remedy he could have pursued. He chose instead to pursue his claim before the Municipal Court I, as he was entitled to do.

50. The respondent Party next argues that the applicant is entitled to bring a motion before the Municipal Court I seeking enforcement of the Municipal Court's decision. The applicant, in fact, brought a motion before the Municipal Court I for enforcement. He received a decision executing the judgement to evict Z.K. However, in contravention of the Law, the eviction was postponed pending Z.K.'s appeal.

51. In the present case the applicant began proceedings in July of 1996 when he first applied to the Town Secretariat of Housing Affairs. As reflected in paragraphs 12 through 20 above, the applicant has been party to innumerable hearings, procedures and complaints before administrative authorities and the courts in an effort to regain possession of the apartment that he undisputedly owns. Further, in anticipation of his return into possession of his apartment, he completed the contract with "Sarajevostan" and invested even more money in the apartment.

52. In addition, the Chamber notes that the applicant first received a decision in his favour on 1 October 1997. The temporary user, Z.K. appealed against that decision. The Municipality denied her appeal and confirmed the first instance decision on 15 January 1998. The applicant appealed for enforcement of the first instance decision on 7 August 1998. He never received any response. The applicant then pursued his claim before the Municipal Court I in Sarajevo. At that point he had received documentation from "Sarajevostan" confirming that he was, in fact, the owner (as opposed

to occupancy right holder) of the apartment. On 6 September 1999, he received the second decision in his favour wherein the court cited the Law on the Cessation of the Application of the Laws on Temporary Abandoned Real Property Owned by Citizens. He has sought enforcement of that decision. It has not been executed. The applicant then received a third decision in his favour from the Municipality Centre. He has sought enforcement. The decision has not been executed.

53. It is an undisputed fact that not one of these decisions have been enforced despite the fact that under both of the new Laws the temporary occupant was to vacate the apartment within at most 90 days. Nor has the respondent Party showed the existence of any exceptional circumstances within the meaning of the new Laws, which have warranted an extension of the temporary occupant's deadline for vacating the apartment. At any rate, any acceptable extension would have only been for one year. Finally, the Chamber notes that the new Laws state clearly that an appeal shall not suspend an eviction.

54. The burden of proof is on the respondent Party to establish that there was a remedy available to the applicant that he failed to exhaust, a remedy that exists not only in theory, but in practice. In light of the above, the Chamber finds that the respondent Party has failed to meet its burden. While the remedies are possibly effective in theory they have proved to be wholly ineffective in practice. In these circumstances, the Chamber is satisfied that the applicant cannot be required to exhaust any further domestic remedies for the purposes of Article VIII(2)(a) of the Agreement.

55. As no other ground for declaring the case inadmissible has been put forward or is apparent the Chamber declares the application admissible.

B. Merits

56. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms", including the rights and freedoms provided for by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 8 of the Convention

57. In his application to the Chamber, the applicant claimed to be a victim of a violation of Article 8 owing to his inability to regain possession of his home. Article 8 of the Convention reads, in relevant part, as follows:

> 1. Everyone has the right to respect for . . . his home. . .
>
> 2- There shall be no interference by a public authority with the exercise of this right except such as 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.

58. The respondent Party concedes the fact that the apartment at Obala Maka Dizdara no. 7 is the applicant's home for the purposes of Article 8. However, it argues that it cannot be held responsible for the fact that applicant left his home during the war voluntarily. Further, it cannot be found to have interfered with his right to his home as there is legislation in place that allows for him to regain possession.

59. There is no disagreement over the fact that the apartment is the applicant's "home" under Article 8. Therefore, to find a violation under this Article, it must be determined whether there has been an interference by a public authority with the applicant's right to respect for his home. If an interference is established, it must then be determined whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention.

60. As a result of the matters complained of, the applicant has been unable to regain possession of his apartment for over 4 years. It is, therefore, clear that there has been an interference by a public authority with his right to respect for his home. In order to determine whether this interference has been justified, the Chamber must examine whether it was "in accordance with law", served a legitimate aim and was "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied (see above mentioned *Onić* decision, paragraph 49).

61. In previous cases, the Chamber has found that the provisions of the old Laws, in particular those relating to repossession, were so arduous for refugees and displaced persons wishing to return to their homes as to make them virtually impossible to comply with, and thus failed to meet the standards of "law" as this expression is understood under Article 8 of the Convention (see case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 50-58, Decisions and Reports 1998; and the above mentioned *Onić* decision, paragraph 50). Consequently, it is clear that the declaration that the applicant's apartment was abandoned was not made "in accordance with the law", as required under Article 8.

62. In so far as the present case relates to the application of the new Laws, the Chamber recalls its above findings relating to the admissibility of the case (see paragraphs 52-56). It is clear that the competent authorities have failed to resolve the applicant's repossession claims within the time limits prescribed by law. In denying Z.K.'s appeal on 24 June 1998, the Cantonal Court relied on The Law on the Cessation of the Application of the Law on Abandoned Apartments. In issuing its decision in the applicant's favour on, 6 September 1999, the Municipal Court I, after having received documentation from "Sarajevostan", relied on the Law on the Cessation of the Application of the Law on Abandoned Real Property Owned by Citizens. Under the first Law the domestic authorities failed to comply with the provisions stipulated under Articles 3(6) and 8. With respect to the second Law the competent authorities failed to comply with provisions stipulated under Articles 12 and 13.

63. In addition to the violation stemming from the decision to declare the applicant's apartment permanently abandoned, there is thus an ongoing violation of his right to respect for his home within the meaning of Article 8 paragraph 1, in so far as the procedure for examining his repossession claim has not been "in accordance with the law" either. On this point the Chamber would add that pursuant to the new Laws it is explicitly stipulated that the failure of the competent authorities to meet their obligations to the temporary user shall not hamper the ability of the owner to reclaim his apartment.

64. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given both the decision declaring the applicant's apartment abandoned and the failure to resolve the applicant's repossession claim within the time limits prescribed by law.

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

65. The applicant complains that his right to the peaceful enjoyment of his possessions has been violated as a result of his inability to regain possession of his property. Article 1 of Protocol No. 1 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 a 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 of penalties."

66. The Federation argues that it was necessary and in the public interest to allocate the apartment to a third person, due to the large of numbers of refugees in need of housing during the war. While the allocation of abandoned apartments may have been necessary during the war, the allocation of such apartments still needed to be accomplished "in accordance with the law". Further, whilst the temporary allocation may have been necessary during the war, such reasoning does not

speak to the current situation facing the applicant who has been attempting to regain his possession since the state of war ceased, over five years ago. Accordingly, this argument must be rejected.

67. The Chamber has already found that an occupancy right can indeed be regarded as a "possession", it being a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy an apartment indefinitely (see *M.J. v. the Republika Srpska*, no. CH/96/28, decision of October 1998, Decisions and Reports 1998, paragraph 32). Undoubtedly, then it is clear that ownership of an apartment is indeed a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

68. A decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Law on Abandoned Apartments, coupled with the arduous provisions regarding repossession, amounted to a *de facto* expropriation which was not subject to conditions provided for by law and thereby in violation of Article 1 of Protocol No. 1 (see above-mentioned *Kevesević* decision, loc. Cit., paragraph 62). The Chamber finds no reason to differ in the present case having particular regard to the fact that in this case the applicant is the actual owner of the apartment. Accordingly, this provision was already violated by virtue of the authorities' effective refusal after 14 December 1995 to allow the applicant to return to his apartment.

69. The applicant's grievance under this provision further extends to the failure of the authorities to enforce decisions entitling him to return to his apartment. The Chamber has already noted (in paragraphs 52-56 and 63 above) that this non-enforcement is not in compliance with the new Laws. Therefore, in addition to the violation stemming from the decision to consider the applicant's apartment abandoned, there is also an ongoing violation of the applicant's right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 in that the procedure for examining his repossession claim has not been "subject to the conditions provided for by law".

70. Accordingly, the Chamber concludes that Article 1 of Protocol No. 1 has been violated, given both the decision to declare the apartment abandoned and the subsequent failure of the authorities to process the applicant's repossession claims in accordance with the new Law.

3. Article 6 of the Convention

71. Article 6 of the Convention, so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations. . . everyone is entitled to a fair and public hearing within a reasonable time by (a) . . . .tribunal. . . "

72. The Federation argues that there has not been a violation of Article 6 because the competent authorities have issued decisions in the applicant's favour and within the time-limits prescribed by law. The applicant maintains that the proceedings as a whole and particularly the enforcement proceedings have not been concluded within a reasonable time as defined by Article 6 paragraph 1. As the applicant has received decisions in his favour both from the administrative organ competent to render such decisions and enforce them and the Municipal Court I, the real issue in this case is whether the competent bodies have completed the enforcement proceedings within a reasonable time. Simply issuing decision after decision, confirming the applicant's right to possession of the apartment is merely illusory absent enforcement of these decisions.

73. The European Court of Human Rights has found that the right to occupy one's home is a "civil right" within the meaning of Article 6 paragraph 1 of the Convention (European Court of Human Rights, *Gillow v. United Kingdom*, judgment of 24 November 1986, Series A no. 109, paragraph 68). The Chamber therefore finds that the dispute about the applicant's right to possession of his apartment comes within the ambit of Article 6 paragraph 1 of the Convention.

74. The European Court of Human Rights has held that Article 6 applies to enforcement proceedings, regard being had to the purpose of initiating proceedings, namely to settle disputes. The Court has held that the enforcement proceedings constitute a second stage, which should be

considered under Article 6 paragraph 1. (see *Martins Moreira v. Portugal*, 1988 Series A no. 143; *Silva Pontes v. Portugal*, 1994 Series A No. 286 A). Consequently, Article 6 paragraph 1 of the Convention is applicable to the entire length of the proceedings, including the enforcement proceedings. Issuing decisions within the time limits prescribed by law, therefore, does not exhaust the Federation's obligations under the Convention

75. The Chamber has already noted that the applicant initiated proceedings before the competent authorities in July of 1996. It is from this date that the Chamber must consider the reasonableness of the length of proceedings under Article 6. The proceedings have lasted for approximately 4 years and 8 months as of February 2001.

76. When assessing the reasonableness of the length of proceedings, for the purposes of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, 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 12, Decisions and Reports 1998).

77. The issue in the applicant's case is whether he is entitled to possession of the apartment. The Chamber cannot find that this is a particularly complicated issue, particularly in light of the fact that the applicant has documentation showing that he is the owner and the fact that the courts and administrative bodies themselves have concluded that he is entitled to possession. Nor can it be argued that the law is particularly complicated on this point. Once that issue was decided it was simply a matter of enforcing the decision and the time limits within which to enforce such decisions are clear (see paragraphs 27-38 above).

78. The applicant first applied for enforcement of the procedural decision of the Administration for Housing Affairs in Sarajevo on 7 August 1998. He received no response. He then received a decision for enforcement of a subsequent Municipal Court I decision in his favour on 9 August 2000. However, the execution of the decision never took place. As the new Laws are clear that a rightful owner has the right to repossession of his home within at most 90 days, barring extreme circumstances, none of which appear in this case, it is clear that the delay in the court proceedings must be imputed to the respondent Party.

79. The Chamber also notes that a person who has lost his home has an important personal interest in the speedy outcome of the dispute and in securing a final and binding judicial decision that will, in fact, provide him with the relief that he seeks.

80. In the circumstance of the present case, the Chamber finds that there has been a violation of the applicant's right to a fair hearing within a reasonable time under Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

VII. REMEDIES

81. Under Article XI(b) of the Agreement the Chamber must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found.

82. In the present case, the Chamber finds it appropriate to order the respondent Party to take all necessary steps to enable the applicant, whose ownership has already been confirmed under the new Laws, to return swiftly to his apartment, and in any event no later than one month after the date on which the present decision becomes final and binding.

83. The Chamber has considered the applicant's request for compensation. Specifically, the applicant requests the sum of 300 KM per month starting from 1 October 1997, the date upon which he received the first decision in his favour. This is the amount he has paid in rent whilst he has been unable to live in his apartment. The Chamber finds no reason to doubt that the applicant has had to pay rent for living elsewhere during this period. On an equitable basis, the Chamber assesses the total amount of rent to be compensated during the relevant period of 40 months to be 200 KM per month, up to and including January 2001, amounting to a total of 8,000 KM and awards this sum by

way of compensation for pecuniary damage. The additional sum of 200 KM per month is awarded and shall be paid to the applicant for each additional month, counting from the month of February 2001, during which the applicant is prevented from returning to his apartment.

84. The Chamber has further considered the applicant's compensation claim in the amount of 1,200 KM for legal costs. The Chamber considers that, since the applicant has not specified his legal costs nor provided any evidence for this claim he should not be awarded compensation in this regard.

85. Finally, the applicant requests 5,000 KM for the pain and suffering that he has had to endure during the period in which he has not been permitted to live in his apartment. He states that this interference has wreaked havoc on his emotional life as he passes his apartment every day, fully cognisant of the fact that someone else is living in it, even though he has been declared the rightful, legal owner. A causal link exists between the failure of the authorities to return him into possession of his apartment and his suffering. On an equitable basis, taking into account the extraordinary length of the domestic proceedings in this case, the Chamber therefore finds it appropriate to award the applicant 2000 KM in compensation for non-pecuniary damage. (see no. CH/97/46 *Kevešević*, Decision on Claim for Compensation of 24 August 1999, Decisions and Reports January – July 1999, paragraph 16).

VIII. CONCLUSION

86. For these reasons, the Chamber decides

1. unanimously to declare the application admissible.

2. unanimously that the failure to allow the applicant to return to his apartment and the failure to enforce the decisions of 1 October 1997, 6 September 1999, and 9 August 2000 confirming first his occupancy right and then his ownership constitute a violation by the Federation of his right to respect for his home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

3. unanimously that the failure to allow the applicant to return to his apartment and the failure to enforce the decisions of 1 October 1997, 6 September 1999, and 9 August 2000 confirming first his occupancy right and then his ownership constitute a violation by the Federation of his right to peaceful enjoyment of his 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;

4. unanimously that the applicant's right to a hearing within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously to order that the Federation of Bosnia and Herzegovina take all necessary steps to enable the applicant to return swiftly into his apartment, and in any event no later than one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure; and

6. unanimously to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 8,000 KM in compensation for pecuniary damage resulting from the violation of his rights under Article 8 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;

7. unanimously to order the Federation of Bosnia and Herzegovina to pay to the applicant an additional 200 KM per month for each additional month, counting from the month of February 2001 during which the applicant is prevented from returning to his apartment;

8. unanimously to reject the applicant's claim for expenses incurred in the proceedings before the domestic courts;

9. unanimously to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 2000 KM in compensation for non-pecuniary damage resulting from the violation of his rights under Article 8 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;

10. unanimously to order that simple interest at an annual rate of 4% (four percent) will be payable over the above sums or any unpaid portion thereof from the day of expiry of the above mentioned one-month period until the date of settlement; and

11. unanimously to order the Federation of Bosnia and Herzegovina to report to it within one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above order.

(signed)	(signed)
Peter KEMPEES	Giovanni GRASSO
Registrar of the Chamber	President of the Second Panel