DECISION ON ADMISSIBILITY

Case no. CH/01/6940

Asim ĐUHERIĆ, Safet ĐUHERIĆ, Zahid KREMIĆ, Meho ZEČEVIĆ, Sejdo ĐUHERIĆ, Hajrudin SMAJLOVIĆ, Fadil ŽILIĆ, Refija ĐUHERIĆ, Fahira ŽILIĆ, Fikreta KARANUHIĆ, Salih HODŽIĆ, Emina HADŽIĆ, Mulija ODOBAŠIĆ, Ibrahim HADŽIĆ, Senad HEDŽIĆ, Mejra ĐUHERIĆ, Fahir HEDŽIĆ, Junuz ĐUHERIĆ, Hasan VOŠANOVIĆ, Hilmo ĐUHERIĆ, Teufik KREMIĆ, Senad KREMIĆ, Šefik KREMIĆ, Šahzudin ŽILIĆ, Redžo ZEČEVIĆ, Mirsad KOTORIĆ, Muris SIVČEVIĆ and Ahmet HEDŽIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 March 2002 with the following members present:

Ms. Michèle PICARD, 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. Andrew GROTRIAN

Mr. Ulrich GARMS, 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 application concerns several large plots of land situated in Trnovo polje, near Kotorsko, the Municipality Doboj, the Republika Srpska. The Municipality Doboj allocated the plots in March 2000 for the purpose of building family homes for refugees or internally displaced persons, primarily of Serb origin. The land at issue was apparently expropriated between 1962 and 1965 for the purpose of creating an agricultural co-operative. The right to use the land was allocated to the agricultural co-operative Johovac (later succeeded by Bosnakop, another agricultural co-operative). The applicants, all of Bosniak origin, appear to be the successors of the former owners of the land. The applicants allege that the former owners of the land were either improperly compensated or not compensated at all when their land was expropriated. The applicants argue at the same time that they are still the owners of the land and that they are entitled to restitution of the land. Additionally, the applicants complain that they have been discriminated against on the basis of their Bosniak origin in the process of this land allocation.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 2 March 2001. The applicants requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to ensure that the legislation of 23 March 2000, providing for the allocation of the land in question, was not executed. On 2 April 2001 the Second Panel of the Chamber decided not to order the provisional measure requested.

3. On 3 April 2001 the case was transmitted to the respondent Party for its observations on admissibility and merits under Articles 6, 13 and 14 of the European Convention on Human Rights ("Convention") and Article 1 of Protocol No. 1 to the Convention. On the same day the Registry sent a letter to the applicants requesting further information.

4. On 24 April 2001 the applicants responded informing the Chamber that they are the successors of the former owners of the land in question in this application and that construction of houses on the plots had already commenced.

5. On 26 April 2001 the respondent Party submitted its observations. On 24 May 2001 the applicants submitted their response to the respondent Party's observations.

6. On 8 September 2001 the Second Panel of the Chamber ordered the Republika Srpska, as a provisional measure, to suspend immediately the allocation of the land at issue in this case. It further ordered the respondent Party, as a provisional measure, to take all necessary steps to stop construction on those plots.

7. On 10 October 2001, pursuant to Rule 29 of the Chamber's Rules of Procedure, the Second Panel of the Chamber relinquished jurisdiction over this case to the Plenary Chamber.

8. On 8 November 2001 the Chamber held a public hearing in this case in room 46 of the Cantonal Court at Šenoina Street in Sarajevo. The applicants were represented by Mr. Zijad Mehmedagić, a lawyer practising in Doboj. The following applicants were present: Messrs. Asim Đuherić, Zahid Kremić, Zijad Zečević, Meho Zečević, Ibrahim Pujagić, Ćazim Hedžić and Šahzudin Huskić. The respondent Party was represented by its Agent, Mr. Stevan Savić, who was assisted by Ms. Marijana Lazić and Messrs. Božo Cvijanović, Nedeljko Kojić, Milorad Bjelogrlić, Rasko Tešić and Jozo Stojanac.

9. The plenary Chamber heard submissions from the Office of the High Representative, represented by Mr. Jayson O. Taylor, as *amicus curiae*, and from the expert witness Mr. Kemal Arnautović, head of the Commission for Real Property Claims Cadaster and Verification Section. The Chamber also heard testimony from the following witnesses: Mr. Nikola Gavrić, Mayor of Doboj, Mr. Branislav Garić, Head of the Department for Physical Planning of the Doboj Municipality and former

manager of Bosnakop and Mr. Novak Radojčić, Head of Department for Reconstruction and Development of the Doboj Municipality.

10. The Chamber deliberated on this case on 7 and 9 November 2001 and 9 January and 8 March 2002. On 9 January the Chamber decided to withdraw the orders for provisional measures. On 8 March it adopted this decision.

III. FACTS

A. Background

11. This case concerns land, which has been historically used for agricultural purposes. The land was apparently expropriated to form an agricultural co-operative, between 1962 and 1965. The land at issue is located at Trnovo Polje, near Kotorsko, the Municipality Doboj with Cadastral plot numbers 2453/1, 2453/4, 2452, 2545 and 2453/9 of the Doboj Cadastral Municipality. This process of expropriating land to form an agricultural co-operative is known in Bosnia and Herzegovina as arrondation. At the time of the arrondation, individual arrondation decisions were to have been issued and such arrondation was to have been registered in the cadaster and land books. According to the applicants, the persons from whom the land was expropriated were either not given any compensation or inadequate compensation. The right to use the land was allocated to the Johovac agricultural co-operative, whose legal successor is Bosnakop.

12. On 15 March 2000 the Government of the Republika Srpska issued a decision establishing that there was a "general interest" in allocating the land at issue in this case to refugees and displaced persons for the purpose of building residential homes (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 9/00). On that same day a contract was entered into between the Doboj Municipality and Bosnakop wherein Bosnakop agreed to the expropriation of the land in question and to the compensation offered by the Municipality.

13. On 23 March 2000 the Assembly of the Municipality of Doboj passed a decision allocating the land at issue, parcelled into 175 lots, to refugees and displaced persons of Serb origin.

14. The authorities of the Doboj Municipality published a notice in the Official Gazette in Doboj informing the public that they had the right to apply for the allocation of land based on the 15 and 23 March 2000 decisions. According to Novak Radojčić, the Head of the Department for Reconstruction and Development in the Municipality of Doboj, who testified during the Public Hearing, the authorities began allocating plots sometime in the late Spring of 2000. He further testified that only persons of Serb origin have applied for the allocation of plots.

15. On 27 April 2000 the High Representative issued a decision, which superseded prior decisions of essentially the same content (see paragraph 39 below), banning all transfers of state owned real property, including former socially–owned property, by authorities of both Entities and Bosnia and Herzegovina. Further, the High Representative's decision provides that the Office of the High Representative may grant a waiver of this Decision, upon a clear showing, by the competent authorities, that the proposed transfer of state–owned real property is non-discriminatory and in the best interests of the public (see paragraph 39 below). Before April 2000, the High Representative's Decision did not include a provision that allowed for a waiver of the ban on transfer of state owned property (see paragraph 38 below).

16. On 10 May 2000 the Office of the High Representative ("OHR") issued instructions to all mayors and municipal councils/assemblies of Bosnia and Herzegovina, detailing the relevant documentation necessary for the issuance of a waiver. The instruction states that the Municipality requesting a waiver has to substantiate with clear and convincing evidence, that the proposed allocation is legitimate, transparent and procedurally correct. Additionally, among other things, the non-exhaustive list of required information specified in the instructions is as follows:

- Documentation confirming that the Municipalities decision on allocation of the socially owned land is in accordance with all relevant domestic laws and regulations both procedurally and substantively;
- Documentation demonstrating (1) that the land is not privately owned and therefore not subject to the law on expropriation; (2) whether the land is subject to restitution; (3) whether the property was used for cultural or religious purposes, or whether the property was used for residential purposes, business activities or agriculture as of 6 April 1992; and
- Documentation detailing the local criteria for reallocation of the land, and any proposed buildings to be built on the land.

B. Issuance of the Kotorsko Waiver

17. On 23 June 2000 the Municipality of Doboj requested, in writing, that the OHR grant a waiver to the 27 April 2000 Decision for the 175 plots of land in Kotorsko, Doboj, at issue in this case, for the benefit of Bosnian Serb displaced persons and refugees. According to the *amicus curiae* statement submitted to the Chamber by the OHR on 7 November 2001, the request stated that the official user of the land registered in the land books under numbers 2453/1, 2453/4, 2453/9, 2452 and 2545, is the agriculture co-operative "Bosnakop", which agreed to an "expropriation procedure" with the municipality in a contract signed on 15 March 2000 and approved by the responsible public attorney on 20 March 2000. Further, the responsible public attorney asserted that all the relevant local laws and regulations were complied with and that the Municipal Assembly of Doboj confirmed the Decision on the Kotorsko allocation on 23 March 2000. The request also confirmed that the beneficiaries were selected on the basis of public competition, advertised in the local media, and based exclusively on the principle of vulnerability. Finally, the request included information that significant construction had already commenced on the proposed allocation site.

18. On 4 December 2000 OHR authorised the proposed allocation on the conditions that 20% of the land allocated would be offered to non-Serb beneficiaries and that the Municipality would construct a multiethnic playground. The waiver also noted that the failure to comply with any of these conditions would render the waiver null and void. On 3 May 2001 Radio Doboj made an announcement concerning the land allocation in Kotorsko, specifically referring to the fact that 20% of the plots are intended for Bosniak returnees. The Chamber did not receive any further evidence to establish that this announcement was published any where else.

19. None of the applicants have applied for allocation of the plots. According to Mr. Mehmedagić, the applicants' representative, the applicants only began returning to Kotorsko at the end of 2000 and they were unaware of the allocation before then.

C. Developments after the issuance of the waiver

20. According to the *amicus curiae* statement of the OHR, in January 2001 representatives of the Kotorsko Displaced Persons of Bosniak Origin contacted the OHR. They alleged that the land in Kotorsko, allocated by the Municipality of Doboj under the 4 December 2000 waiver ("the Waiver"), was privately owned due to the fact that the land in question had been wrongfully seized, nationalised or expropriated by the Socialist Federal Republic of Yugoslavia. On 15 January 2001 the Deputy High Representative responded, in writing, to the complaints of the Kotorsko representative of Displaced Persons of Bosniak origin. The Deputy High Representative explained that though the OHR was sympathetic to the complaints, it was not in a position to set right alleged injustices that may have occurred generations ago during the nationalisation process. Further, he explained that only the courts are empowered and equipped to reverse these past nationalisations and expropriations. They were advised to seek redress from the appropriate local courts.

21. In August 2001, OHR initiated a review of the Kotorsko waiver after it received information which it believes seriously called into question the accuracy of the information provided by the Municipality Doboj in its application for the waiver. According to the OHR, the review confirmed the following:

1) That the Public Attorney's Office did not verify that the proposed land allocation complied with all relevant local laws and regulations;
2) That the registered allocation right holder of parcel 2453/9 is "Enterijer factory" and not Bosnakop;
3) That the transfer of land between Enterijer factory and the Municipality was conditioned upon a subsequent reallocation of the plots to employees of the factory, a criteria for beneficiary selection that violates the condition of "vulnerability";
4) That 9 plots were registered as privately owned in the land books, thereby bringing the ownership status of a significant portion of the allocated land into question, and further, making certification by the public attorney's office inappropriate;
5) That there was a potential failure to comply with the Republika Srpska Law on Agricultural Land, which forbids the use of agricultural land for other purposes, except under limited and exceptional circumstances;
6) That there are serious discrepancies regarding the identity of the beneficiaries and their status as vulnerable people, OHR having received information that several of the beneficiaries have been able to repossess their pre-war homes or apartments.

22. On 30 August 2001, as a result of the review, the OHR suspended the Waiver and banned all further construction on all the land encompassed by the Waiver, until the ban was expressly lifted by the OHR. The OHR expressed a willingness to lift the ban, once the Doboj authorities corrected all inaccuracies. OHR also expressed a willingness to lift the ban regarding the 9 disputed plots once a court of competent jurisdiction resolved the question of the ownership status of these plots.

23. According to information received from the applicants, construction on the land encompassed by the Waiver has continued despite the ban by the OHR and the Order for provisional measures issued by the Human Rights Chamber. This was confirmed by Nikola Gavrić, the Mayor of the Municipality of Doboj who testified at the Public Hearing. He stated that individuals continued construction and that the local police were unable to intervene.

D. Questions as to ownership status of approximately 12 plots

24. All of the land in question was originally registered in the cadastral books under numbers established between 1880 and 1884, during the time of the Austro-Hungarian Empire. It was the land registered under those numbers that appears to have been arrondated between 1962 and 1965. Mr. Arnautović, the expert who appeared at the Public Hearing before the Chamber, submitted that possession is registered in the cadaster while ownership is registered in the land books.

25. In 1972 the Municipality of Doboj began updating the cadastral books and assigning the plots new numbers. Apparently, the entire area of land that had been arrondated between 1962 and 1965, and which is encompassed by the Waiver, was combined into five big parcels and given new cadastral numbers. However, the new cadastral books only indicate the new cadastral numbers and do not cross–reference the actual plots of land that comprised them under the old cadastral or land book numbers. Additionally, the 23 March 2000 decision of Municipality of Doboj subdivided the five parcels at issue into 175 separate plots in order to build private homes. Therefore, in order to establish the precise boundaries of the land in question it is necessary to look into the old land books and compare maps of the area. As such, the OHR commissioned the Geodetic Institute to investigate and issue a report concerning the ownership status of the land at issue. Mr. Arnautović performed a further investigation and evaluation of the report of the Geodetic Institute.

26. The report prepared by Mr. Arnautović, as well as the report of the Geodetic Institute, established that according to the 1972 cadastral records the entire area, subject to the Waiver, was registered as socially-owned property used by the Johavac co-operative, whose legal successor is Bosnakop. It could not be established whether individuals ever objected to the registration of the land in question as socially owned because there was no list of objections in the cadastral archives. An examination of the 1967 air survey demonstrated that the land in question was used entirely for agricultural purposes. Between 1982 and 1985 a certain parcel was further divided and parcels were allocated for the construction of the Enterijer factory.

27. The Geodetic Institute was unable to examine, in detail, the cadastral books from the Austro-Hungarian period because, according to the Cadaster Office in the Municipality of Doboj, some documents were destroyed in a flood that occurred around 1965. Further, they were unable to find the possession records (deeds of title) for Kotorsko in the City Archive, despite the fact that the Archive still keeps some possession records for other cadastral municipalities. Accordingly, the report stated that it could only assume that the Johovac co-operative farm was the registered user of the entire area of land in question between 1963 and the entry into force of the new cadastar on 1 January 1973.

28. The Geodetic Institute examined further the registration status in the land books of all the plots listed in the cadastral books. They found that nine plots are registered in the land books as privately owned. There are no individual arrondation decisions for the nine plots that are still registered as privately owned. The names in the land books are those of the owners in 1962 and before. Additionally, many of the plots had numerous owners. Accordingly, of the one hundred and seventy-five (175) individual lots currently allocated by the Doboj Municipality for allocation as individual homes, sixty-five (65) appear to be privately owned, according to the land registry.

29. Mr. Arnautović investigated the situation further and prepared a separate expert report for the Public Hearing. In his submission, he stated that it had now become apparent that twelve plots appear to be privately owned according to the land books. Additionally, during the hearing Mr. Mehmedagić, the representative for the applicants, submitted an excerpt from the land registry establishing that yet another plot was registered as privately owned. However, for the same plot of land Mr. Arnautović had a copy from the land registry showing that it was socially owned. The same occurred with respect to another plot of land with regard to which Mr. Savić and Mr. Arnautović had different entries from the land registry regarding the same plot number.

30. It became clear during the Public Hearing that the land book and the cadastral records are not harmonised. In this regard, Mr. Arnautović stated that over time the land book became more and more inaccurate, and the cadaster more accurately reflected the factual status on the ground. With respect to the 12 plots that are still registered as privately owned, individual arrondation decisions have not been delivered to the land book registrar.

IV. RELEVANT DOMESTIC LEGISLATION

A. Relevant Republika Srpska Legislation

1. The Law on Basic Property and Legal Relations (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 6/80-189)

31. Article 28, paragraph 2, of the Law on Basic Property and Legal Relations provides that a bona fide and legal possessor of real estate, over which another person has the right to property, shall acquire the right to property by adverse possession after the expiry of ten years. Paragraph 4 of Article 28 provides that a mala fide possessor over real estate, over which another person has the right to property, shall acquire the right to that property by adverse possession after 20 years.

32. Article 37 of the Law on Basic Property and Legal Relations deals with ownership disputes. It provides that an owner of property (real or moveable) may file a claim with the competent Municipal Court requesting that the possessor return the property to him. It further provides that the owner shall have to prove that he has the right to the property that he is requesting be returned to him as well as that the disputed object is physically in possession of the defendant. Finally, Article 37 provides that such claim is not subject to the statute of limitations.

2. The Law on Expropriation (Official Gazette of the Republika Srpska "OG RS" no. 8/96)

33. Article 19, paragraph 1, of the Law on Expropriation provides that the government of the Republika Srpska may establish a general interest for expropriation if the expropriation of real

property is necessary for, among other things, building apartments which will satisfy the housing needs of refugees, displaced persons or other socially vulnerable persons.

34. Article 19, paragraph 6, provides that the decision by the Republika Srpska government establishing the general interest shall establish the beneficiary of the expropriation.

35. Article 19, paragraph 7, provides that an administrative dispute may be initiated before the Supreme Court of Republika Srpska against the document of the Government on the establishment of the general interest.

3. Legislation concerning the restitution of expropriated property

36. The Law on Return of Seized Real Property (OG RS 21/96) entered into force on 1 October 1996. It regulates the manner and conditions of returning the ownership of real property, which has been forcibly seized for the benefit of state (social) ownership, to the previous owners or their legal successors (Article 1).
The previous owners who were given another appropriate real property as compensation for their forcibly seized real property or have had a fair compensation paid to them in accordance with the Law on Expropriation are not entitled to have their seized property returned to them (Article 4).
The Law on Return of Seized Land (OG RS 21/96) further specifies the provisions of the Law on Return of Seized Real Property with regard to expropriated land. It entered into force on 1 October 1996 as well.
The Law on Return of Confiscated Property and Compensation (OG RS 13/00) came into force on 2 June 2000. Article 19 provided that agricultural land, as well as undeveloped construction land shall be restored into possession of the beneficiary of the restitution. Article 27 provided that the restitution procedure shall be initiated by submitting a request to the Restitution Commission established by the Municipal Assembly.
On 30 August 2000 the High Representative issued three decisions, annulling these three laws with immediate effect, "noting that [they were] flawed both as to procedure and as to substance" (OG RS 31/00). The two decisions annulling the two 1996 Laws provide, however, that "[n]othing in this Decision shall affect any judicial or administrative decision, act or order made pursuant to the aforesaid Law prior to the date of this Decision". Finally, they provide that "[a]ny ongoing procedure which has been instituted pertaining to the rights of restitution of claimants under the above mentioned Law shall cease with immediate effect on the date of this decision".

4. The Law on Administrative Disputes (OG RS 12/94)

37. Article 1 of the Law on Administrative Disputes provides that the court shall decide in administrative disputes on the lawfulness of administrative acts concerning rights and obligations of citizens and legal persons.

B. Decisions of the High Representative

38. On 26 May 1999 the High Representative issued a Decision concerning the transfer of state-owned property. The Decision states as follows:

> "Notwithstanding the provision of any other law, state property (including former socially-owned property, but excluding socially-owned apartments) may not be disposed of (including allotment, transfer, sale giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used on April 6, 1992 for cultural or religious services, or if it was used by natural persons for residential purposes, business activities, or agriculture.
>
> Any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work.

> This Decision does not apply to transactions for the purposes of restitution to pre-nationalisation owners, or for the purposes of privatisation, in accordance with Entity laws specifically regulating these subjects.
>
> . . .
>
> This Decision shall enter into force on May 26, 1999, and shall remain in force until 31 December 1999. It may be extended by further Decision."

On 30 December 1999 the High Representative extended this Decision until 30 June 2000.

39. On 27 April 2000 the High Representative issued the following Decision concerning the allocation of state-owned property. This Decision revoked and superseded the Decision of 26 May 1999.

> "Notwithstanding the provision of any other law, state-owned real property, including former socially-owned property, but excluding socially owned apartments, may not be disposed of, allotted, transferred, sold, or given for use or rent, by the authorities of either Entity or Bosnia and Herzegovina.
>
> Any decision referred to in the previous paragraph made by the authorities of the Entities after 6 April 19992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction.
>
> This Decision does not apply to transactions for the purposes of restitution to the pre-nationalisation owners, or for the purposes of privatisation, in accordance with Entity laws specifically regulating these subjects.
>
> ...
>
> Any decision, agreement or transaction in violation of this Decision is null and void. The Office of the High Representative may, upon a clear showing by the competent authorities of an Entity or Bosnia and Herzegovina that a proposed transfer of state-owned real property is non-discriminatory and in the best interests of the public, grant a written exemption to this Decision. The burden of clearly showing that a proposed transfer of state-owned real property is non-discriminatory and in the best interests of the public rests with the competent authority requesting a written exemption to this Decision.
>
> This Decision shall enter into force as law on 27 April 2000 and shall remain in force until 31 December 2000. This Decision may be extended."

This Decision was extended on 20 December 2000 until 30 March 2001.

40. On 30 August 2000 the High Representative issued a decision annulling the Republika Srpska Law on Restitution of Confiscated Property and Compensation (OG RS 13/00). In that decision the High Representative noted that the Law was flawed as to both substance and procedure. The decision took effect as of 30 August 2000.

41. On 31 March 2001 the High Representative issued the following Decision extending the Decision of 27 April 2000.

> "***Noting*** that the conditions which ought to enable the authorities of the Entities and of the State to dispose or otherwise allocate state-owned real property, including former socially-owned property, in a manner that is non-discriminatory and in the best interests of the citizens, do not now exist throughout Bosnia and Herzegovina
>
> ...I hearby issue the following:

I further extend the Decision 27 April 2000 until 31 July 2002 and for avoidance of ambiguity expressly exclude it from applying to

- Leases of state-owned property on which businesses or other premises, which are the property of state owned firms, are situated, and,
- Re-allocation of state-owned real property, including formerly socially-owned property, which took place prior to April 6, 1992.

Further, by a date agreed with the High Representative, or by 31 July 2002, whichever shall be the earlier, the authorities of Bosnia and Herzegovina and its entities are to assume full responsibility for ensuring re-allocation of state-owned real property, including formerly socially-owned property, in a non-discriminatory manner and in the best interests of the citizens of Bosnia and Herzegovina."

V. ALLEGED VIOLATIONS OF HUMAN RIGHTS

42. The applicants all allege violations of Articles 6 (fair trial), 13 (effective remedy), 14 (prohibition of discrimination) and 17 (prohibition of misuse of rights) of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. Republika Srpska

43. In its submission of 26 April 2001, in respect of the facts, the Republika Srpska states that it does not deny that the land in question was previously arrondated. However, it denies that the land was taken from the previous owners without compensation. All prior owners of the land in question were compensated either monetarily or by the allocation of other land. After the land was arrondated, the former owners did not continue to till the land or use it in any other way.

44. As to the "expropriation contract" between the Doboj Municipality and Bosnakop, the respondent Party states "taking into consideration that the land was socially-owned property, i.e. state property, the expropriation procedure could not take place, regardless of the fact that this term is used in the contract." Nevertheless, in the present case the procedure for the allocation of the land in question was carried out pursuant to the Law on Expropriation (RS OG no. 8/96)(see paragraph 33 above). Pursuant to this Law the "general interest" was established by the government of the Republika Srpska on 15 March 2000 and published in the Official Gazette of the Republika Srpska (OG RS 9/00). On 23 March 2000, based on a decision by the Municipal Assembly of the Municipality of Doboj, the land was parcelled into 175 individual plots for the construction of family homes. On 4 December 2000 the OHR issued a waiver from its 27 April 2000 Decision.

45. With respect to the admissibility of the application, the respondent Party argues that the application is inadmissible because the arrondation that occurred between 1962 and 1965 does not fall within the Chamber's competence *ratione temporis*. Further, it submits that the applicants have not availed themselves of domestic remedies and that the applicants have not complied with the six months rule. Specifically, the respondent Party submits that pursuant to Article 19 of the Law on Expropriation the applicants could have initiated an administrative dispute before the Supreme Court of the Republika Srpska against the 15 March 2000 governmental decision establishing the "general interest".

46. With respect to the merits, the respondent Party submits that, as to Article 6, the applicants can not be heard to complain because they never initiated a dispute before the courts. With respect to Article 14, the respondent Party submits that the applicants have not been discriminated against because they were appropriately compensated when the land was arrondated in the 1960s. Further, the current allocation provides that 20% of the plots shall be allocated to persons of Bosniak origin.

47. With respect to Article 1 of Protocol No. 1, the respondent Party submits that the applicants do not have rights protected under this Article because the applicants ceased to be owners or possessors over the property in question over forty years ago. Therefore, they cannot be considered to have possessory rights over the land in question giving rise to protection under this Article. Additionally, to the extent there was a right under existing legislation in the Republika Srpska to claim restitution, such legislation was annulled by the High Representative almost as soon as it was adopted (see paragraph 36 above). In further support of this argument the respondent Party states that the claims of the applicants are essentially based on their expectation that the Republika Srpska shall pass a new law on restitution. However, this expectation cannot constitute a "legitimate expectation" for the purposes of Article 1 of Protocol No. 1 protection. Accordingly, this claim should be dismissed as it is incompatible *ratione materiae* with the Agreement.

48. During the public hearing the respondent Party, argued that even if some plots were still registered as privately owned, Bosnakop became the owner through the law on adverse possession (see paragraph 31 above).

B. The Applicants

49. The applicants maintain their complaints in whole. In their submission of 24 April 2001, the applicants submit that some of them were able to continue cultivating their land after the arrondation by way of a rental relationship. However, according to affidavits submitted by several applicants on 30 October 2001, none of the applicants were allowed to continue working the land in question. Those applicants who tried to continue tilling the land were forcibly removed. Several of the applicants state that they were given lands in exchange for the arrondated property. However, the land that they were given was of much less value.

50. In their submission of 24 May 2001, the applicants argue that the Waiver granted by the OHR was based on false information provided the Municipality of Doboj. Specifically, the applicants state that the allocation is discriminatory and, therefore, not in the public interest. Further, pre-war citizens of the Municipality Doboj did not have equal access to the project allocating the land, which is evident from the fact that only 20% of the land have been allocated to "non-Serb population". The applicants, through their representative, maintain that they have the right to restitution once a law is passed regulating restitution because the applicants were not properly compensated for the land that was forcibly taken from them. Additionally, several applicants contested the arrondation proceedings back in the 1960s. Finally, during the Public Hearing the applicants' representative stated that none of the applicants have applied for allocation of any of the one-hundred and seventy-five (175) plots.

51. In their submission of 30 October 2001 the applicants submit that the following applicants' ancestors, based on the report of the Geodetic Institute, are still registered as owners over plots of land, in issue, in the land books: Alma Osmanbegović, Husnija Kremić, Osman Kremič, Salih Đuherić, Hasan and Hilmo Đuherić. Huso Đuherić, Husnija Huskić, Sefjudin Huskić, Osman Huskić, Mina Zečević, Adil Huskić, Taiba Huskić and Ibro Đuherić.

VII. OPINION OF THE CHAMBER

52. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether they have been exhausted. Under Article VIII(2)(c), the Chamber shall dismiss any application, which it considers is incompatible with the Agreement or manifestly ill-founded.

A. As to the applicants' assertion that they still own certain plots

53. The Chamber recalls that there is a dispute over the ownership status of between 9 and 12 plots, encompassing approximately sixty-five (65) out of the one hundred and seventy-five (175) plots currently allocated for the building of family homes. It appears that at least 12 plots are still

registered in the land books as privately owned. This dispute raises complex questions of domestic law, including, among other things, issues of adverse possession, inheritance and inconsistencies in the land books and cadastral records (see paragraph 30 above). The Chamber notes that the applicants have not availed themselves of the domestic remedies available to them with respect to the establishment of the ownership status of the land at issue. To the extent that any of the applicants believe that they are still the *bona fide* owners of any of the land at issue they have not filed claims with the competent Municipal Court requesting that their respective ownership rights be recognised and the land returned to them. Further, it does not appear that these applicants have initiated inheritance proceedings. Therefore, the Chamber decides to declare the application inadmissible, for failure to exhaust domestic remedies, in so far as it is based on the applicants' assertion that they still are owners of the land at issue.

B. As to the applicants' complaint concerning the 1962-65 expropriation

54. The Chamber recalls that the primary complaint of all of the applicants is that the land in question will be subject to restitution once a law regarding restitution is passed in the Republika Srpska. They complain specifically that the land in question was forcibly taken from them or their ancestors between 1962 and 1965 and that they were not properly compensated, if at all. They further allege, though not specifically, that at least as to some of the applicants, the expropriation procedures had been contested at the time the land was forcibly taken.

55. The Chamber notes that based upon its consistent case–law, the respondent Party cannot be held responsible under the Agreement for events that occurred before it came into force (see e.g., case no. CH/96/15, *Grgić*, decision on admissibility of 5 February 1997, section IV, Decisions on Admissibility and Merits 1996-1997). The Chamber recalls, further, that according to the case-law of the European Commission of Human Rights, deprivation of ownership is, in principle, an instantaneous act and does not produce a continuing interference with the applicants' property rights (see, e.g., application no. 7379/76, decision of 10 December 1976, Decision and Reports 8, p. 211). Accordingly, the arrondation that took place between 1962 and 1965 does not fall within the scope of the Chamber's competence *ratione temporis*. Therefore, the Chamber decides to declare the application inadmissible also with regard to the applicants' complaints concerning the 1962-65 expropriation.

C. As to the applicants' claim of restitution

56. In light of the above finding, the Chamber will limit itself to examining whether the applicants' prospect of becoming future owners of the land formerly owned by their families, once legislation on the restitution of nationalised property has been enacted, constitutes a possession within the meaning of Article 1 of Protocol No. 1 to the Convention.

57. The Chamber recalls that, according to the jurisprudence of the European Court of Human Rights, Article 1 of Protocol No. 1 does not guarantee the right to acquire possessions. Rather it protects the rights of persons to peaceful enjoyment of their existing possessions, or, at least, an asset which the applicant has a "legitimate expectation" to obtain (see Eur. Court HR, *Marckx* case, judgment of 13 June 1979, Series A no. 31, page 23, paragraph 50, *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 332, paragraph 31 and *Pressos Compania Naviera SA and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, paragraph 31).

58. The Chamber notes that it has previously held that in order to be a "legitimate expectation" constituting a protected possession, the applicant's prospects would need to be based on legislation in force or on a valid administrative act (see cases nos. CH/98/1040, *Živojnović,* decision on admissibility of 9 October 1999, paragraph 21, Decisions on admissibility and merits August-December 1999 and CH/00/4863 *Islamic Community in Bosnia and Herzegovina*, decision on admissibility of 5 June 2001, paragraph 4, Decisions on admissibility and merits January-June 2001).

The Chamber further recalls that both of the above-mentioned cases dealt precisely with claims of applicants alleging violations based on the fact that they believe they will be entitled to restitution in the future.

59. The Chamber takes note of the fact that for approximately four years there was a law in the Republika Srpska regulating restitution. However, there is no evidence that any of the applicants filed a claim for restitution under that law and, therefore, no decision was ever rendered indicating that the applicants would have had rights protected under that law. Nor is it clear that the applicants will be the beneficiaries under any restitution law to be adopted in the future. Finally, most importantly for the application before the Chamber, legislation that could potentially give rise to a right under Article 1 of Protocol No. 1 is not in effect, creating at best a speculative expectation.

60. The Chamber, therefore, concludes that the application, in so far as it concerns claims to restitution under legislation to be enacted in the future, is incompatible with the Agreement *ratione materiae*. The Chamber thus decides to declare the application inadmissible in this respect as well.

D. As to the complaint of discrimination

61. The applicants complain that they have been discriminated against in connection with the right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1. With respect to this allegation, the Chamber takes note of the fact that the initial allocation of the state owned property took place, effectively, in March 2000. At that time there was a Decision by the High Representative banning the Municipality from disposing of state-owned property. Further, the Chamber takes notice of the fact that Kotorsko, before the war, was a predominately Bosniak area. The allocation of these plots to persons primarily of Serb origin most likely has the effect of hindering the exercise of the right of refugees or internally displaced persons to return, in general. However, the Chamber notes its above finding that the applicants' allegations do not give rise to a protected right under Article 1 of Protocol No. 1. As such, there can be no finding of discrimination in connection with this Article. Additionally, in this regard the Chamber notes that none of the applicants have applied for the allocation of a plot.

62. The applicants' representative submitted, further, that the Republika Srpska Law on Return of Seized Land (OG RS 21/96) provided for the return of nationalised land in such a way as to only provide for decisions in favour of persons of Serb origin. It is because of the discriminatory character of this law, both in substance and procedure, that the High Representative issued a decision annulling it. The High Representative annulled this law at the same time that he annulled the Law on Return of Confiscated Property and Compensation (see paragraph 36 above). Essentially, the applicants' representative appears to be arguing that the Republika Srpska has been engaging in a deliberate pattern of discrimination against persons of Bosniak origin, either by manipulating the allocation of state-owned property for the benefit of persons of Serb origin or by drafting restitution laws that only benefit persons of Serb origin.

63. The Chamber acknowledges this allegation with grave concern. However, the Chamber notes that pursuant to consistent case law of the European Court of Human Rights, an applicant can only be heard with regard to an alleged violation of which he claims to be actually and directly affected. In other words, the Convention does not provide for individuals a kind of *actio popularis.* It does not provide for applicants to complain of alleged violations in the abstract (see e.g., Eur. Court HR, *Klass v. Germany*, judgment of 6 September 1978, Series A. no. 28, p. 18, paragraph 33). Similarly, under the Agreement, the Chamber can only consider alleged violations of the Convention or discrimination in connection with any of the other international instruments annexed to the Agreement with regard to specific victims. The Chamber can not consider violations of domestic law by public authorities or private individuals, where such illegalities do not disclose a violation of applicants' rights protected under the Agreement. Therefore, in spite of the fact that the Republika Srpska authorities appear to have acted in blatant disregard of applicable laws (see paragraph 21 above), the Chamber is confined to the allegations of the applicants and the facts before it as regards the alleged violations of the rights protected by the Ageement. It is not within the Chamber's jurisdiction to decide on either the validity of the information provided by the Municipality of Doboj in its request for the Waiver, or the appropriateness of the beneficiaries as concerns the vulnerability requirement, unless these matters are shown to be relevant for the establishment of the justifiability

of the interference with a right of the applicants protected by the Agreement. Accordingly, the applicants having failed to show themselves to be the victims of these alleged violations within the meaning of Article VIII of the Agreement, because they have not individually been discriminated against in the enjoyment of a right protected under the Convention, the Chamber decides to declare the application inadmissible in this regard as well.

E. As to the complaints under Articles 6, 13 and 17 of the Convention

64. Regarding the applicants' complaint of a violation of their right to a fair trial, protected by Article 6 of the Convention, the Chamber notes that they have not brought their grievances before any court of the respondent Party. Also, the applicants have not substantiated their allegation that "there is no way or possibility to have a fair trial and to get the applicants' civil rights protected."

65. As to the complaint of a violation of the right to an effective remedy before a national authority, enshrined in Article 13 of the Convention, the Chamber notes that, according to the case-law of the European Court of Human Rights, the obligation to provide a remedy arises when an applicant has, at least, an "arguable claim" of a violation of a right protected by the Convention (see, e.g., Eur. Court H.R., *Leander* judgment of 26 March 1987, Series A no. 116, paragraph 77). The Chamber has found that the applicants' complaints of a violation of Article 1 of Protocol No. 1 are incompatible *ratione materiae* with the Agreement, insofar as they have not failed to avail themselves of domestic remedies. The Chamber therefore finds that the applicants have no "arguable claim" of a violation of Article 1 of Protocol No. 1, and that, therefore, no issue arises with regard to Article 13.

66. Finally, regarding the complaint under Article 17, the Chamber notes that, when applied to a respondent Party, Article 17 essentially prescribes that a respondent Party may not misuse its power to legitimately interfere with rights protected by the Convention in order to further aims that are contrary to the Convention. The applicants complain of a violation of Article 17 on the ground that "the national, social, religious and property rights and freedoms of the applicants are annulled or significantly limited by the decisions of the Doboj Municipality Assembly". However, the Chamber has found no interference with the applicants' protected rights that would fall within its competence as defined by the Agreement. Therefore, there can be no violation of Article 17 by the respondent Party in this case.

67. To sum up, the applicants' complaints under Articles 6, 13 and 17 of the Convention are manifestly ill-founded. The Chamber therefore decides to declare the application inadmissible with regard to these complaints as well.

F. Conclusion

68. In light of all of the above, the Chamber decides not to accept the application, it being partly inadmissible on grounds of failure to exhaust available remedies pursuant to Article VIII(2)(a) of the Agreement, partly incompatible with the Agreement *ratione temporis* within the meaning of Article VIII(2)(c), partly incompatible with the Agreement *ratione materiae* within the meaning of Article VIII(2)(c), and partly inadmissible as manifestly ill-founded within the meaning of Article VIII (2)(c).

VIII. CONCLUSIONS

69. For the above reasons, the Chamber decides,

1. by 10 votes to 1 vote, to declare the application inadmissible, for failure to exhaust domestic remedies, insofar as it concerns the alleged violations of Article 1 of Protocol No. 1 with respect to the plots of land of which the ownership status remains ambiguous;

2. by 10 votes to 1 vote, to declare the application inadmissible *ratione temporis* insofar as it concerns alleged violations of Article 1 of Protocol No. 1 during the expropriation process between 1962 and 1965;

3. unanimously, to declare the application inadmissible *ratione materiae* insofar as it concerns an alleged violation of Article 1 of Protocol No. 1 to the Convention in respect of restitution under legislation that may be adopted in the future;

4. by 10 votes to 1 vote, to declare the application inadmissible as manifestly ill-founded insofar as it concerns alleged discrimination in the enjoyment of the right protected under of Article 1 of Protocol No. 1 to the Convention;

5. by 10 votes to 1 vote, to declare inadmissible the complaints of violations of Article 6, 13 and 17 of the Convention.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michele PICARD
President of the Chamber

Annex Dissenting Opinion of Mr. Hasan Balić, Ph.D.

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Hasan Balić, Ph.D.

DISSENTING OPINION OF MR. HASAN BALIĆ, Ph.D.

I disagree with the above decision of the Chamber in relation to paragraphs 69/1, 69/2, 69/4 and 69/5 for the following reasons.

The seizing of land in the Republika Srpska from non-Serb population and turning it into construction land, which is *de facto* accessible only to Serbs is an example of a general political concept of ethnical cleansing based on discrimination on religious and national grounds. During the 1992 - 1995 war, the respondent Party expelled the applicants from the agricultural land in Kotorsko, which had been used by Bosniaks for centuries. It expelled them from their homes. After the signing of the Dayton Peace Agreement on 14 December 1995, the applicants started returning to Kotorsko. The respondent Party, in order to prevent it and with the aim of changing the demographic structure of the population, populated Kotorsko with the Serbs who came into that area during the course of the 1992 - 1995 war from other parts of Bosnia and Herzegovina. The Bosniaks from Kotorsko and other non-Serb persons could practically not take part in the public competition for the allocation of plots for constructing family houses, although these native peoples have no real conditions to live there.

In my opinion, the Chamber interprets the requirement of exhaustion of domestic remedies too restrictively and to the detriment of the applicants. The dispute is too complex and socially shattering and the Chamber cannot so easily (paragraph 52) go over Article VIII(2) of the Agreement and Article VIII(2)(a) of the Agreement and draw the conclusion of non-exhaustion of domestic remedies. The Chamber neglected to take into account that both judicial and administrative authorities in the Republika Srpska are exclusively mono-ethnic. I do not contest the impartiality of judges and administration officials *per se*, but when one has in mind that they are in service of a non-democratic concept, then my conclusion is understandably contrary to the conclusion of my esteemed and learned colleagues. I do agree with them that there is a domestic remedy, but it's only "on paper". In practice, it is not an effective remedy and, therefore, there exist the violations under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. In this case, I understand differently than my colleagues Article 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in relation to the requirement of competence "*ratione temporis*". In this case I leave aside the occurrences that happened before 14 December 1995 (1962 to 1965, paragraphs 54 and 55 and I am not sure that the Chamber correctly invokes the case law of the European Court). In my opinion, it is important that after 14 December 1995 the respondent Party gave the land, which the applicants used to have in their ownership, later in possession, in the sense that through the Co-operative they used it as the Co-operative workers with which they were, I suppose, either in a labour or some other kind of contractual relationship. In addition, ethnical cleansing is one of the markings of the crime of "genocide" as set out in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and it resulted in consequences which the respondent Party uses after 14 December 1995. Therefore, Article 1 of the Convention and Article 1 of Protocol No. 1 to the Convention cover not only ownership but also property rights stemming from the right to work on a certain object and with a certain tool.

These are the legal reasons for which I could not agree with my colleagues and because of which I wrote my separate opinion.

(signed)
Hasan Balić, Ph.D.