DECISION ON ADMISSIBILITY AND MERITS

(delivered on 10 May 2002)

Case no. CH/98/799

Željko BRČIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 May 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
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 Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Croat origin. On 2 February 1992, the applicant concluded a contract with the Yugoslav National Army (hereinafter the "JNA") on purchase of an apartment in Mostar over which he had an occupancy right. During the armed conflict in Bosnia and Herzegovina the applicant left Mostar. In March 1997, he submitted a request for repossession of his apartment to the Municipality Mostar "Stari Grad". He was not reinstated into possession of his apartment. He tried to solve his case through judicial and administrative organs in Mostar. As of the date of this decision, the applicant has not been reinstated into possession of his apartment.

2. The applicant alleges violations of his right to home under Article 8 of the Convention, right to property under Article 1 of Protocol No. 1 to the Convention, and right to fair hearing under Article 6 of the Convention, and he alleges discrimination on ethnic grounds in the enjoyment of the mentioned rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The Chamber registered the application on 24 July 1998. The applicant addressed the Chamber on a few occasions requesting urgency in dealing with his case and submitting different documents. The applicant informed the Chamber that the Office of the Ombudsman of the Federation of Bosnia and Herzegovina has opened an investigation in the same case.

4. On 12 December 2000 the Chamber transmitted the application to the respondent Party for its observations on the admissibility and the merits of the case. On 2 April 2001 the respondent Party submitted its observations.

5. On 28 September 2001 the Chamber received a letter by the applicant stating that the Municipality Mostar Stari Grad issued the procedural decision allowing his reinstatement into possession of the apartment.

6. On 31 December 2001 the Chamber received a request of the respondent Party to hold a public hearing in this case and to ensure that the judges appointed by the Republika Sprska do not participate in the deliberations and the decision of the case.

7. On 17 April 2002 the Chamber received letters by both the applicant and the Federation stating that the temporary users of the applicant's apartment will be evicted on 13 May 2002, according to the decision of the Service for Housing Affairs of the Municipality Mostar Stari Grad.

8. The Chamber considered the case on 8 November 2001, 11 April and 6 May 2002. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. On 2 February 1992 the applicant purchased from the JNA an apartment in Ulica Huse Maslića No. 3 in Mostar Stari Grad over which he had the occupancy right.

10. On 14 February 1992 the applicant transferred through the service of the Mostar post office the amount required by the purchase contract to the competent services of the JNA in Belgrade.

11. The applicant was a civil engineer employed in the JNA. On 19 April 1992 he was demobilised from the JNA. On 3 November 1992 he left Bosnia and Herzegovina and lived as a refugee in Austria until 25 October 1999. Subsequently, he moved to Croatia (Zagreb).

12. On 6 March 1997, the applicant submitted a request for repossession of his apartment to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). As of the date of this decision, he has not received any decision from CRPC.

13. The applicant submitted a request for voluntary return of refugees and displaced persons to the Service for Housing Affairs of the Municipality Mostar Stari Grad on 26 April 1998.

14. On 31 July 1998 he submitted a request for repossession of the apartment to the same organ in accordance with the Law on Cessation of Application of the Law on Abandoned Apartments. Due to the silence of the administration, he repeated his request as an appeal to the Municipality Mostar Stari Grad on 7 September 1999.

15. During the same period, the applicant also started a procedure to change the purpose of part of his apartment into a business premise. On 25 February 1998 the applicant filed a written submission to the Administration for Housing, Public Utilities, Legal-Property Affairs and Construction of the Municipality Mostar Stari Grad ("the Housing Administration") requesting an urban permit to transform part of the apartment in question into a business place. On 23 June 1998 the Housing Administration rejected his request. On 18 September 1998 the appeal authority, the Federal Ministry for Urban Planning and Environment, confirmed the first instance decision. Finally, on 15 April 1999, the Supreme Court of the Federation of Bosnia and Herzegovina rejected the applicant's claims in the administrative dispute initiated by the applicant.

16. On 8 December 1998 the Head of the Municipal service gave the applicant the following answer to one of his numerous submissions: "In view of the problems in finding alternative accommodation for the temporary user of your facility, as well as the number of such cases in the area of the Municipality Mostar Stari Grad, we kindly ask you to take into account these circumstances because we are not in the position to comply with your request within the legally prescribed time limit".

17. In letters to the Ombudsman of the Federation of Bosnia and Herzegovina and to the Federal Ministry of Defence, the Municipality's Department for Housing Affairs stated that the current users occupy the applicant's apartment without legal grounds, and that they are building a private house which has not been finished yet.

18. The applicant addressed the Federal Ministry of Defence with the request to issue an order for his registration in the Land Books as the owner of the disputed apartment. The Federal Ministry of Defence rejected the request by letter of 1 October 1999 on the grounds that he was not in possession of the apartment as required by Article 39a of the Law on Sale of Apartments with Existing Occupancy Rights.

19. On 17 January 2000 the office in Mostar of the Federal Ombudsman informed the applicant that they, acting upon the applicant's complaint, had opened an investigation, and requested a report from the respondent Municipality. The applicant did not receive further information.

20. On 10 August 2001 the Municipality Mostar Stari Grad issued the procedural decision ordering reinstatement of the applicant into possession of his apartment.

21. On 11 April 2002 the Service for Housing Affairs of the Municipality Mostar Stari Grad issued a decision ordering the eviction of the temporary users of the applicant's apartment on 13 May 2002.

B. Relevant domestic legislation

1. Legislation relating to JNA apartments

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

23. Relevant to this case is the Law on Securing Housing for the JNA which came into force on 6 January 1991 (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" - no. 84/90). This law established that JNA apartments could be sold to the members of the JNA (Article 20), having regard to their contributions to the JNA housing fund. It also established the authority so that procedures could be set up to do so (Article 36). In the following years a number of decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina. The aim of those laws was to regulate issues of socially owned property in general and socially owned property over which the JNA had jurisdiction in particular.

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

25. On 3 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (OG RBiH no. 5/95) which ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA until new housing legislation had been adopted.

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

27. The Law on the Sale of Apartments with an Occupancy Right came into force on 6 December 1997 and has subsequently been amended (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 27/97, 11/98 and 27/99). This law, as amended, does not affect the annulment of the present applicant's contract. Under Article 39 of this law, an occupancy right holder who contracted to purchase an apartment on the basis of the Law on Securing Housing for the JNA shall be credited the amount which has been previously paid, calculated in German Marks (DEM) at the exchange rates valid on the day of contracting.

2. The Law on Abandoned Apartments

28. The Law on Abandoned Apartments ("the old law"), 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 (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). It governed the re-allocation of occupancy rights over socially-owned apartments that had been abandoned.

29. 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).

30. 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).

31. 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).

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

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

33. The old law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new law") which entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99 and 56/01).

34. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 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).

35. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment (Article 7a). 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 therefore 30 days before the original deadline expires (Article 3 paragraph 5 compared with Article 7a paragraphs 2 and 3).

36. With a few exceptions not relevant to the present application, the time-limit for an occupancy right holder to file a claim for repossession expired 15 months after the entry into force of the new law, i.e. on 4 July 1999 (Article 5 paragraph 1). If no claim was submitted within that time-limit, the occupancy right is cancelled (Article 5 paragraph 3).

37. 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.

38. Following a decision on repossession, the occupancy right holder is to be reinstated into his apartment not earlier than 15 days, unless a shorter deadline applies, and no later than one year from the submission of the claim (Article 7a). 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).

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

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

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

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

5. The Law on Administrative Proceedings

42. 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 to execute an administrative decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration").

6. The Law on Administrative Disputes

43. Article 1 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

44. Article 22 paragraph 3 provides that an administrative dispute may be instituted also 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

45. The applicant complains that his right to respect for his home as guaranteed by Article 8 of the Convention, his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, his right to a hearing within reasonable time as guaranteed by Article 6 of the Convention, and his right not be discriminated against as guaranteed by Article 14 of the Convention have been violated.

V. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

46. The Federation of Bosnia and Herzegovina, as the respondent Party, states in its observations that the Chamber should declare the application inadmissible for non-exhaustion of domestic remedies.

47. It considers that the applicant should have exhausted the remedies offered by the Law on Sale Apartments with Occupancy Right, i.e. the request for registration to Federal Ministry of Defence (Article 39a) and appeals if necessary (Article 39d). The respondent Party also states that the applicant, in accordance with Article 216 paragraph 3 of the Law on Administrative Disputes should have appealed against the silence of the Municipality Mostar Stari Grad since it did not decide his request within the legal time-limit.

48. In its submission on merits, the respondent Party states that no violation of Article 6 has occurred. It claims that the applicant exhausted remedies in the administrative procedure to change the purpose of his apartment although he had not previously obtained his possession back. Regarding the length of proceeding, the respondent Party considers the conduct of the applicant as inappropriate. Finally, it requested the Chamber to take into account the particular situation of the Municipality of Mostar Stari Grad and more generally of the whole of Bosnia and Herzegovina which face problems to find alternative accommodation for temporary users.

49. In relation to the alleged violation of Article 8 of the Convention, the respondent Party points out that the applicant had started at the same time two procedures: one to be reinstated into his apartment and another to transform it into a business premise. Therefore the applicant's possession cannot be considered as his home within the meaning of the Article 8 of the Convention. If the apartment is considered as "home", the respondent Party claims that Article 8 has not been violated because it respected criteria of Article 8 paragraph 2. The fact that the war has caused mass movement of the population justified the limitation of the applicant's right because it was "necessary in a democratic society". For these reasons, the respondent Party considers it has not violated Article 8 of the Convention.

50. In respect of the complaint of discrimination, the respondent Party states that the same laws are applicable to every citizen and that the applicant did not demonstrate being a victim of any discrimination. Moreover it considers that the applicant was enabled to realise his rights in the different procedures.

51. Regarding Article 1 of Protocol No. 1, the respondent Party underlines that the applicant has not lost his right to his property. It considers that the applicant has not realised his right to repossession in accordance with Article 39 of the Law on Sale of the Apartments with Occupancy Right. Therefore, Article 1 of Protocol No. 1 has not been violated.

52. Finally, in relation to the applicant's claims for compensation, the respondent Party thinks that his request for pecuniary damages is ill-founded because the refugee status provides certain rights such as the right to accommodation free of charge. On the other hand, it considers the applicant's request to hold the Municipality Mostar Stari Grad responsible for the eviction of the current occupants and his repossession as non-pecuniary compensation admissible and fully justified.

53. By submission of 31 December 2001, the Federation requests the Chamber to hold a public hearing in this case, as well as in other 23 cases concerning former JNA apartments. Procedurally, the Federation bases its request on Rule 33 of the Chamber's Rules of Procedure, which provides that the Chamber can decide, *proprio motu* or at the request of a party, to take any action which it considers necessary for the proper performance of its duties under the Agreement. The Federation argues that, as the applicant has failed to submit the payment slips relating to his purchase of the apartment, he is an occupancy right holder and not the owner of the apartment. These factual circumstances, the Federation submits, distinguish the present case from the *Miholić and Others* case (CH/97/60 et al., *Miholić and Others*, decision on admissibility and merits delivered on 7 December 2001), and it is therefore necessary to hold a public hearing and not to apply the reasoning followed in the *Miholić and Others* case to the present application. Moreover, referring to the alleged lack of impartiality of the judges appointed by the Republika Sprska in the *Miholić and Others* case, the Federation asks the Chamber to ensure that these judges do not participate in the present case.

B. The applicant

54. In his submissions the applicant repeatedly states that he is the owner of the apartment in question and that he was wilfully prevented from repossessing his apartment by the actions of the Administration of the Municipality Mostar Stari Grad.

55. As compensation the applicant requests pecuniary compensation for costs of rent in the amount of 5,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") or alternatively the right to transform part of his property into a business premise in order to give him some means of living. Regarding the compensation for non-pecuniary damages, he asks for the renovation of his apartment.

VI. OPINION OF THE CHAMBER

A. The request of the respondent Party for a public hearing

56. The respondent Party requests the Chamber to hold a public hearing in this case in order to establish that the factual circumstances are substantially different from those in the *Miholić and Others* case, on the ground that the applicant can not be considered as the owner of the apartment but solely as an occupancy right holder, because the applicant did not provide the Chamber evidence that he has paid the purchase price of the apartment. The Chamber notes that whether the applicant has paid the purchase price is a question that can be decided on the basis of the documents submitted by the applicant, which the Chamber has forwarded to the respondent Party for its observations. Moreover, the Chamber does not, in this decision, rely on its reasoning in the *Miholić and Others* case, which appears to be the preoccupation of the respondent Party. Therefore, the Chamber has decided not to follow the respondent Party's request to hold a public hearing in the present case.

B. The request of disqualification of the judges appointed by the Republika Srpska

57. The Chamber notes that the grounds relied on by the Federation in asking for the withdrawal or disqualification of the judges appointed by the Republika Srpska in the present case are the same as those set forth in the "motion for the renewal of proceedings" in the *Miholić and Others* case. The plenary Chamber has addressed these allegations and rejected them in its decision in that case (Decision on request for review and on motion for the renewal of proceedings of 8 February 2002, paragraphs 7-10). The Chamber, recalling its arguments in the *Miholić and Others* case, considers that the Federation has not provided any evidence proving a link between the alleged transmission of information to a Party and any of its Members. Furthermore the respondent Party has not showed that one of the Chamber's Members had a personal interest in the applications. The Chamber accordingly decides to reject this motion in the present case as well.

C. Admissibility

58. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement. According to Article VIII(2)(a) of the Agreement, the Chamber shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

59. The applicant directed his application against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber will consider the admissibility of the application as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina separately.

1. Bosnia and Herzegovina

60. During the proceedings before the Chamber, the Chamber has not received any evidence which would tend to indicate that Bosnia and Herzegovina is responsible for what the applicant complains of. The case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore is to be declared inadmissible *ratione personae* as against that respondent Party.

2. Federation of Bosnia and Herzegovina

61. The Chamber notes that the situation complained of by the applicant is within the competence of the Federation of Bosnia and Herzegovina.

(a) Exhaustion of effective domestic remedies

62. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether the applicant exhausted effective remedies available to him. The Chamber has previously recalled that, in relation to the requirement for exhaustion of domestic remedies, under Article 26 (currently Article 35) of the Convention (see case no. CH/97/58 *Onić*, decision on admissibility and merits of 12 January 1999, paragraph 38, Decisions January-July 1999):

> "The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

63. In the particular case, the applicant initiated the procedure before the administrative organs in accordance with the new law in July 1998 when he submitted his request for repossession of the apartment for the first time. The Federation claims that, having in mind that the applicant did not

engage himself enough in this case, and that it does not have the possibility to find alternative accommodation for the temporary users of the applicant's apartment, it could not comply with applicant's request for repossession of the apartment. Since his case had not been considered on 7 September 1999, the applicant submitted an appeal against the "silence of the administration" to the second instance administrative organ. He has never received any answer to that appeal. Taking into account the date of submission of the request and the numerous interventions by the applicant to comply with his request, the Municipality Mostar Stari Grad was obliged to issue the procedural decision upon his request, i.e. to reject it as ill-founded or to accept it. The procedural decision in question was issued only on 10 August 2001, thus, three years after the submission of his request. Still, the applicant is not in the possession of his apartment yet. Accordingly, organs of the Federation of Bosnia and Herzegovina have not complied with their obligation to implement the applicable housing legislation.

64. The Chamber notes that it is true that the applicant could have initiated an administrative dispute against the persistent silence of the first and second instance administrative organs. However, the Chamber observes that a decision in the applicant's favour by a court would only have clarified the duty of the administrative organs to issue a decision recognising the applicant's right to be reinstated. However, the Head of the Municipal Service of Mostar Stari Grad had acknowledged the existence of the applicant's right, but refused to act in accordance with the law (see paragraphs 16 and 17 above). Under these circumstances, there is no reason to suppose that the responsible authorities, which have for a long period disregarded their legal obligations to reinstate the applicant into his apartment, would have treated a decision by a court with any greater respect. The Chamber therefore finds that in the applicant's case the initiation of an administrative dispute did not offer reasonable prospects of success.

65. The respondent Party also argues that, under Article 39d of the Law on Sale of Apartments with Occupancy Right (see paragraph 40 and 41 above), the applicant could have appealed against the letter of 1 October 1999 of the Federation Ministry of Defence, rejecting his request to be registered as the owner in the Land Books. His request was rejected on the ground that he was not in possession of the apartment, and therefore did not fulfil the conditions set out by Article 39a of the Law. In this respect, the Chamber notes that the applicant was misled into believing that he had to repossess the apartment before he could be registered as its owner (see below paragraph 85 and the Chamber's decision in case no. CH/98/457, *Anušić*, decision on admissibility and merits of 10 October 2000, paragraph 79, Decisions July-December 2000). The applicant was therefore justified in pursuing primarily his reinstatement into possession of the apartment, instead of attempting an appeal against the decision of the Ministry of Defence, which moreover was communicated in the form of a letter and not of a procedural decision.

66. In these circumstances the Chamber is satisfied that the applicant could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law.

(b) Admissibility of the discrimination complaint

67. Regarding the applicant's claim that he has been discriminated against, the Chamber notes that the applicant has not submitted any evidence to support his allegation. Therefore, the Chamber is of the opinion that this part of the application is unsubstantiated and manifestly ill-founded.

(c) Conclusion as to admissibility

68. The Chamber further finds that no other ground for the declaring the case inadmissible has been established. Accordingly, the application is to be declared admissible in so far as directed against the Federation of Bosnia and Herzegovina, except for the allegations of discrimination, and inadmissible in so far as directed against Bosnia and Herzegovina.

D. Merits

1. Article 8 of the Convention

69. Article 8 of the Convention, insofar as relevant, provides:

> "1. Everyone has the right to respect for [...] his home [...].
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

70. The respondent Party argues that the apartment in question cannot be considered as the applicant's "home" and that his right to respect of his home has not been interfered with. It submits that the applicant submitted a request for change of purpose of the apartment into business premises, even before he submitted his request for repossession of the apartment.

71. The Chamber notes that the applicant had lived undisturbed in his apartment until 1992, when he had to leave because of the armed conflict in Bosnia and Herzegovina. The Chamber has previously held that persons requesting reinstatement into possession of their property, over which they lost possession during the armed conflict, retained sufficient connection to it that it could be regarded as their "home" for the purpose of Article 8 of the Convention (see case no. CH/97/58, *Onić*, decision on the admissibility and merits of 12 January 1999, paragraph 48, Decisions January-June 1999). The Chamber considers that the applicant left his apartment that had been his "home" until 1992, and he has not been reinstated into it yet. The Chamber further finds that he submitted to the CRPC his request for repossession in 1997. With regard to the respondent Party's argument regarding the applicant's intention to change the purpose of his apartment, the Chamber notes that the applicant intends to change just a part of his apartment into a business premise.

72. The Chamber therefore is of the opinion that the applicant's apartment is to be considered as his home for the purposes of Article 8 of the Convention.

73. The Chamber recalls that the municipality Mostar Stari Grad has issued a decision confirming the applicant's right to repossess his apartment. The applicant has been unable to regain possession of his property due to the clear failure of the authorities of the respondent Party to deal effectively with his request. It follows that the result of the inaction of the respondent Party is that the applicant cannot return to his apartment and that there is an ongoing interference with the applicant's right to respect for his home.

74. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see, *inter alia*, case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraphs 47-58, Decisions and Reports 1998). There will be a violation of Article 8 if any one of these conditions is not satisfied.

75. On 31 July 1998 the applicant submitted a claim to repossess the apartment according to Articles 4, 5 and 6 of the new Law (see paragraphs 13, 14 and 16 above). The applicant holds the occupancy right over the apartment since 1992, and it is still valid. Consequently, he has a right to repossess the apartment according to the new Law. The competent authority was obliged to decide within 30 days according to Article 6 of the Law. It had to accept the claim and had to decide positively on repossession of the apartment by the applicant (Article 7). For more than three years the Service of Housing Affairs, and, after the applicant's appeal against the silence of the administration, the Municipality have failed to decide on the applicant's request.

76. On 10 August 2001 the applicant finally received a decision pursuant to the new law, confirming his right. However this decision, in the applicant's favour, has not been executed. The

respondent Party has not shown that the applicant was notified, at least 30 days before the end of the current occupants' 15 day period for vacating the apartment, of any documented exceptional circumstances warranting an extension of the latter time-limit. Therefore, there is an ongoing violation of Article 8 of the Convention as the procedure followed by the respondent Party under the new law has not been "in accordance with the law" based both upon the three-year silence of the authorities in the face of the proceedings initiated by the applicant, and due to the subsequent failure to enforce his occupancy right once recognised (see case no. CH/97/42, *Eraković*, decision on admissibility and merits of 14 January 1999, paragraph 51, Decisions January-July 1999).

77. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given the failure of the authorities to respond to the applicant's proceedings for three years and the failure to execute the decision effectively entitling the applicant to return to his dwelling.

2. Article 1 of Protocol No. 1

78. The applicant complains that his right to peaceful enjoyment of his possession 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 as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

(a) As to the applicant's attempts to regain possession of the apartment

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

80. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

81. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the failure of the authorities to enable the applicant to regain possession of the apartment was not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated and this violation is ongoing.

(b) As to the applicant's request to have his ownership registered

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

83. Accordingly, the Chamber considers that the rights of the applicant under his contract of purchase for the apartment in question constitute "a possession" for the purposes of Article 1 of

Protocol No. 1 to the Convention. One such right is to be registered as the owner of the apartment with the relevant authorities, which, as described above, the applicant has been unable to do.

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

85. The Chamber notes that Article 39a of the Law on Sale of Apartments with an Occupancy Right prescribes that the Federation Ministry of Defence must issue an order allowing for the applicant to be registered as the owner under the condition that he is in possession of the apartment over which he holds an occupancy right. In this case, however, the applicant is not in possession of the apartment. Nevertheless, under Article 39c of that law, the Federation Ministry of Defence shall still issue an order to register as the owner of the apartment an individual who has exercised the right to repossess it pursuant to the new Law, regardless of whether such person is actually in possession of the apartment. In this case, the applicant exercised his right under the new Law by applying to the municipality on 31 July 1998 (see paragraph 13 above). The condition under Article 39c of the new Law has therefore been met. The Federation Ministry of Defence has apparently taken the position, however, that it will not issue the relevant order until the applicant is in possession of the apartment, which is contrary to the meaning of Article 39c. Therefore, the Federation Ministry of Defence is responsible for the applicant's inability to be registered as the owner. These behaviours have not been in accordance with conditions provided for by law.

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

3. Article 6 of the Convention

87. Article 6 of the Convention, insofar as relevant, provides as follows:

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

88. The applicant alleges violation of his right as guaranteed by this provision. The respondent Party states that there has been no violation of this Article in the applicant's case.

89. The Chamber, having regard to the violations of Article 8 and Article 1 of Protocol No. 1, does not consider it necessary to examine the case under this provision.

VII. REMEDIES

90. Under Article XI(1)(b) of the Agreement the Chamber must address the question what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of the applicant.

91. The Chamber recalls that in accordance with its order for the proceedings in this case the applicant was afforded the possibility of claiming compensation within the time limit fixed by the Chamber. The Chamber has received the claims of the applicant and the observations of the respondent Party regarding compensation of pecuniary and non-pecuniary damages.

92. The Chamber therefore considers it appropriate to order the Federation to take all necessary steps to enable the applicant, whose occupancy right has already been confirmed, to register the apartment as his ownership and to regain possession of his apartment.

93. Article XI(3) of the Agreement provides: "subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding". Thus, a decision of the Chamber does not become final and binding until the provision in Article XI(3) of the Agreement has been met, that is, in particular, until after the Chamber decides upon any requests for review filed in accordance with the Chamber's Rules of Procedure.

94. However, Article XI(1) of the Agreement states that "the Chamber shall promptly issue a decision, which shall address: ... (b) what steps shall be taken by the Party to remedy such breach, including ... provisional measures". The Chamber interprets this provision in the sense that it is authorised to order the respondent Party to take certain steps without further delay, that is, before the decision becomes final and binding pursuant to Article XI(3) of the Agreement, in order to remedy breaches of the Agreement.

95. Since the applicant in the present case has, for a long time, been unable to regain possession of his apartment due to the failure of the respondent Party to reinstate him in a timely manner, the Chamber finds it appropriate to exercise the powers granted under Article XI(1)(b) of the Agreement to order the respondent Party to reinstate the applicant without further delay, and at the latest within one month after the date on which the present decision is delivered, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement.

96. The Chamber also considers it appropriate to order the respondent Party to financially compensate the applicant for the loss of use of his apartment. This sum should be KM 200 per month and payable from the date the time-limit for the competent administrative organ to issue a decision of reinstatement expired, i.e. 30 days after the applicant lodged his request starting with September 1998. This sum should continue to be paid at the same rate until the end of the month in which the applicant regains possession of his apartment.

97. In addition the applicant is awarded the sum of KM 1200 on account of non-pecuniary damages in recognition of his suffering as a result of his inability to regain possession of his apartment, to be paid no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

98. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period following the date on which this decision becomes final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure, and on any unpaid portion of the sum awarded in paragraphs 96 and 97 until the date of settlement in full.

VIII. CONCLUSIONS

99. For the above reasons, the Chamber decides,

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

2. unanimously, to declare the application inadmissible with regard to the complaint of discrimination;

3. unanimously, to declare the application admissible against the Federation of Bosnia and Herzegovina with regard to the complaints brought under Articles 6 and 8 and Article 1 of Protocol No. 1 to the Convention;

4. unanimously, that the failure to respond to the applicant's request for reinstatement, from 1 September 1998 to 10 August 2001, and the failure to enforce the decision confirming his occupancy right, as from 10 August 2001, violate the applicant's right to respect for his home within the meaning of Article 8 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that the failure to respond to the applicant's request for reinstatement, the failure to enforce the decision confirming his occupancy right and the refusal to register the applicant

as owner of the apartment violate the applicant's right to peaceful enjoyment of his possession within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that it is not necessary to rule on the complaint under Article 6 of the Convention;

7. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps without further delay, and in any event not later than 10 June 2002, by way of legislative or administrative action, to allow the applicant to be registered as the owner of the apartment;

8. unanimously, to order the Federation of Bosnia and Herzegovina to reinstate the applicant into his apartment without further delay, and at the latest on 10 June 2002;

9. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than 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, the sum of KM 10,000 (ten thousand) composed of KM 1200 by way of compensation for non-pecuniary damage and KM 8800 by way of compensation for the loss of use of his apartment, and to order the Federation to pay to the applicant KM 200 for each further month that he remains excluded from his apartment as from June 2002 until the end of the month in which he is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

10. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) percent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

11. unanimously, to order the Federation of Bosnia and Herzegovina to report to it, within three months from the date on which the present 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 orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel