DECISION ON ADMISSIBILITY AND MERITS
(delivered on 6 September 2002)

Case no. CH/00/6134

Vojislav ŠTRBAC, Tomislav ŠTRBAC, Jela ŠTRBAC and Mara VEGO

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 2 September 2002 with the following members present:

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

Mr. 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 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application concerns the rights of the applicants, who are siblings, all of Serb origin, to use and to construct upon certain socially-owned real property situated in the Municipality of Bosanska Krupa in the Federation of Bosnia and Herzegovina, upon which existed orchards and a few residential houses. Prior to its nationalisation, the real property in question was owned by the applicants' father, and in 1990, the applicants inherited the remaining post-nationalisation property rights in it. Due to the armed conflict, the applicants who were living in the vicinity were forced to depart from their real property and re-locate to the Republika Srpska. On 25 August 1997, the Municipal Council of the Municipality of Bosanska Krupa (the "Municipal Council") issued two procedural decisions, the first seizing a part of the applicants' real property and the second allocating that seized real property to five paraplegic war veterans of Bosniak origin for the construction of residential housing. The interests of the applicants were represented in these administrative proceedings by a "representative of the former possessors", who was appointed by the Municipality of Bosanska Krupa. The applicants knew nothing about these proceedings until April 2000. Immediately thereafter, the applicants submitted a proposal for renewed proceedings to the Municipal Council. They have received no response to this proposal to date. In the meantime, however, the Municipality of Bosanska Krupa initiated proceedings before the Court of First Instance in Bosanska Krupa to determine the issue of compensation to the applicants for the seized real property. On 13 May 2002, the Court of First Instance in Bosanska Krupa issued a procedural decision (which became legally valid and effective on 2 July 2002) awarding the applicants compensation for the seized real property, but the applicants claim that this amount of compensation is insufficient.

2. On 26 May 1999, the High Representative issued a Decision suspending the power of domestic authorities to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities. That Decision was later revoked and superseded by the Decision of the High Representative of 27 April 2000, which provides that domestic authorities may not, *inter alia*, dispose of, allot, transfer, or give for use any "state-owned real property, including former socially-owned property". Both Decisions declare any such decision made after 6 April 1992 which affects the rights of refugees and displaced persons to be "null and void, unless a third party has undertaken lawful construction work". On 10 October 2000, the Chamber issued an order for provisional measures protecting the seized real property in question. None the less, in violation of that order, the third parties who had been allocated the real property have undertaken the construction of at least six houses on the seized real property of the applicants.

3. The application raises issues under Article 6 (right to access to a court) and Article 8 (right to respect for home) 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. The application also raises issues under Article II(2)(b) of the Agreement for alleged or apparent discrimination in connection with the human rights guaranteed by the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted to the Chamber by the applicant Vojislav Štrbac on 22 September 2000 and registered on the same day.

5. In the application, the applicant Vojislav Štrbac requested that the Chamber order the respondent Party, as a provisional measure, to cease immediately all construction works on and allocation of real property owned or possessed by the applicants until the proceedings before the Chamber have been concluded. On 10 October 2000, the Acting President of the Second Panel ordered the respondent Party, as a provisional measure, "to refrain from carrying out any construction work on the cadaster lots nos. 13/38-2, 13/38-7, 13/38-8, 13/38-9, 13/38-10, 13/38-11 in Bosanska Krupa and not to permit any such construction by any other institution or person, whether public or private". The "order shall remain in force until the Chamber has given its final decision in the case, unless it is withdrawn at an earlier stage".

6. On 10 October 2000, the Chamber transmitted the application to the respondent Party for its observations under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. On 13 November 2000, the respondent Party submitted observations on the order for provisional measures and on the admissibility and merits of the application.

7. On 21 November 2000, the applicant Vojislav Štrbac submitted observations in reply to the respondent Party's observations on the order for provisional measures and on the admissibility and merits of the application. Contained within the reply to the observations on the admissibility and merits of the application, the applicant Vojislav Štrbac submitted a claim for compensation for pecuniary damages in the total amount of 199,150 Convertible Marks (*Konvertibilnih Maraka*, "KM"), including 144,150 KM for deprivation of real property (calculated at 50 KM per square metre of real property), 5000 KM for deprivation of perennial seeds planted on the real property, and 50,000 KM for destruction of 1000 square metres of real property.

8. On 22 December 2000, the respondent Party submitted further observations on the claim for compensation.

9. In July 2001, the applicant Vojislav Štrbac contacted the Chamber and notified it that construction works on the real property in question were in progress. On 11 July 2001, the Chamber sent a letter to the respondent Party referring it to the order for provisional measure of 10 October 2000 and notifying it that construction on the real property protected by the order "will constitute a violation of the obligations of the Federation of Bosnia and Herzegovina under the Human Rights Agreement".

10. On 8 August 2001, the respondent Party submitted further observations in response to the Chamber's letter of 11 July 2001. The respondent Party confirmed that construction works on the real property in question were in progress by the third party investors who had been allocated the real property. On 9 August 2001, the respondent Party submitted to the Chamber a letter from the Ministry for Human Rights and Refugees of Bosnia and Herzegovina dated 22 June 2001. In this letter, the Ministry objected to and sought a withdrawal of the Chamber's order for provisional measures of 10 October 2000.

11. On 14 August 2001, the Chamber reminded the respondent Party that under the terms of the order for provisional measures of 10 October 2000, "the respondent Party must, among other things, prevent such construction even if carried out by a private institution or person".

12. On 19 September 2001, the Chamber requested additional information from both the applicant Vojislav Štrbac and the respondent Party. Such additional information was received from the applicant Vojislav Štrbac on 2 October 2001 and from the respondent Party on 10 October 2001 and 18 January 2002. The applicant's response clearly alleged discrimination based on ethnic origin. The Chamber sent these observations to the respondent Party on 11 December 2001. On 23 April 2002, the applicant provided further additional information, which the Chamber also sent to the respondent Party.

13. On 2 July 2002, the Chamber received letters of authorisation from Tomislav Štrbac, Jela Štrbac, and Mara Vego. The Chamber understands these letters as providing confirmation that Toma Štrbac, Jela Štrbac, and Mara Vego join as co-applicants to the application submitted by their brother Vojislav Štrbac and that the co-applicants authorise Vojislav Štrbac to represent them before the Chamber in these proceedings.

14. On 24 July 2002, the Chamber requested additional information from both the applicants and the respondent Party. Such additional information was received from the applicants on 26 July and 5 August 2002 and from the respondent Party on 8 August 2002. These responses were transmitted to the opposing parties, respectively.

15. The Chamber deliberated on the admissibility and merits of the application on 8 September 2001, 6 July and 2 September 2002. On 2 September 2002, the Chamber adopted the present decision on admissibility and merits.

III. STATEMENT OF THE FACTS

16. The facts presented below are not materially disputed between the parties, except as specifically indicated.

17. The real property in question in this case is situated in the Municipality of Bosanska Krupa. It was originally owned by the applicants' father, Uroš Štrbac, and it is registered in the deed of title no. 680 of the Cadaster of the Municipality of Bosanska Krupa. Sometime in the late 1950s or early 1960s, the property was nationalised. In 1960, the applicants' father died. On 16 June 1965, the Court of First Instance in Bosanska Krupa issued a procedural decision on inheritance related to the real property for which Uroš Štrbac was the "owner". This decision provides that the applicants' mother, Sava Štrbac, inherited 3/5 of the real property, while Vojislav Štrbac inherited 1/5 and his brother Tomislav Štrbac inherited the remaining 1/5 of the real property. This decision further states that the inheritors should "register ownership rights in the land books". In 1985 part of the real property was designated as undeveloped building land in the applicable urban regulatory plan.

18. In 1990, after the death of their mother, Sava Štrbac, the applicants Vojislav Štrbac, Tomislav Štrbac, Jela Štrbac, and Mara Vego, all of Serb origin, inherited all the post-nationalisation property rights in, including the right to use, their mother's real property located in the Municipality of Bosanska Krupa. The inherited real property includes one house (cadaster lot no. 13/37) and the "*Luka*" orchards (cadaster lots nos. 13/38-1, 13/38-2, 13/38-3, and 13/38-6). In accordance with a decision on inheritance of the Court of First Instance in Bosanska Krupa of 29 May 1990, the applicants became co-possessors/co-users of their mother's real property in equal 1/4 parts. The sisters of the applicant Vojislav Štrbac gifted their shares to him pursuant to a contract on gift of 6 August 1990. Thereafter, the applicant Vojislav Štrbac lived in the family homestead (on cadaster lot no. 13/37) and maintained orchards on this real property, from which he earned an income to support his family. After obtaining the appropriate license, he also commenced construction of a new house on the real property (on cadaster lot no. 13/38-5). Due to the armed conflict, however, the applicant Vojislav Štrbac and his family were forced to depart from the real property in question, leave their home of some 50 years, leave their partially constructed new house, and re-locate to the Republika Srpska, where they presently reside. The applicants Tomislav Štrbac and Jela Štrbac were also forced to leave their places of residence in Bosanska Krupa and Sarajevo, respectively, due to the armed conflict.

19. According to minutes submitted by the respondent Party, on 13 August 1997, the Department for Property-Legal Affairs and Housing-Communal Affairs of the Municipality of Bosanska Krupa held a hearing in relation to the seizure of undeveloped building land formerly in the possession of Sava Štrbac. The Department invited Asim Skenderović, a graduated jurist, to appear as the temporary representative of the applicants, *i.e.*, the co-users/co-possessors of the real property in question. At the hearing, the temporary representative stated as follows:

> "I do not object to the seizure of the building land, but I propose that in proceedings on compensation the former possessors be awarded land of adequate surface area and quality in the city centre of Bosanska Krupa. In relation to the present agricultural items, namely the hedge and fruit trees, an expert assessment should be performed and monetary compensation should be paid. In case this request cannot be satisfied in view of awarding alternative land, then I request monetary compensation calculated in accordance with market values at that moment."

As confirmed by the respondent Party in its submission of 10 October 2001, the Municipality of Bosanska Krupa made no attempt to contact the applicants prior to 25 August 1997 because "the Municipality was not aware of the applicants' addresses", which is also the reason why it appointed the temporary representative to protect the applicants' interests.

20. On 25 August 1997, the Municipal Council issued two procedural decisions concerning part of the real property in question. The first procedural decision was issued on the basis of paragraph 1 of Article 25 of the Law on Building Land of the Socialist Republic of Bosnia and Herzegovina (see paragraph 41 below). In that decision, the Municipality of Bosanska Krupa "seized the undeveloped

socially-owned building land from the possession of the former occupant, Sava Štrbac, widow of Uroš, and others," in particular cadaster lots nos. 13/38-2, 13/38-7, 13/38-8, 13/38-9, 13/38-10, 13/38-11 in Bosanska Krupa, with a total surface area of 2883 square metres. The decision states that the former occupants of the building land "are obliged to turn over possession of the land to the Municipality of Bosanska Krupa after receipt of this decision" and that the issue of compensation shall be decided upon in separate proceedings.

21. The procedural decision of 25 August 1997 on the seizure of real property reasons that the need for the building land subject to the decision was identified in accordance with the regulatory plan of the City of Bosanksa Krupa and the decision on urban planning development, which provided for construction of individual housing premises. In the proceedings leading up to the issuance of the decision, it was established that the subject real property was socially-owned and, within the meaning of Article 6 of the Law on Building Land, that the Municipality of Bosanska Krupa had the right to dispose freely of it. In those proceedings, the Municipal Council heard from "a representative of the former possessor[s]" because the former possessors currently lived outside Bosanska Krupa and the Municipal Council was unaware of their places of residence. In accordance with these facts, the decision states that the requirements of Article 25 of the Law on Building Land had been met. The decision allows for no right of appeal, but provides that an administrative dispute could be initiated before the Cantonal Court of Bihać within 30 days of receipt of the decision. A copy of the decision was provided to "the representative of the former possessor[s]". Since no administrative dispute was initiated against the decision, it became legally valid and effective on 6 October 1997.

22. In the second procedural decision of 25 August 1997, issued on the basis of paragraph 2 of Article 47 of the Law on Building Land, the Municipal Council "allocat[ed] the undeveloped socially-owned building land for the purpose of constructing individual housing premises and opening access to a private road". The Municipal Council allocated cadaster lots nos. 13/38-2, 13/38-7, 13/38-8, 13/38-9, and 13/38-10, each designated as "*Luka*" orchards to five individuals of Bosniak origin from Bosanska Krupa, while it allocated cadaster lot no. 13/38-11, designated as an "infertile road", for the "general use". The decision states that "the issue of compensation for the allocated building land shall not be decided upon because it involves paraplegics who are relieved of paying [compensation] for building land". The reasoning of the decision elaborates: "concerning that it involves paraplegics, who require family housing buildings adjusted to their manner of use and that they are relieved of paying any compensation, the Municipality of Bosanska Krupa has undertaken the obligation to allocate the above-real property and to build family houses for those persons for their benefit as veterans of the war" in Bosnia and Herzegovina. The decision further reasons that "with regard to the established factual background, there are no legal obstacles to allocating the building land to the persons mentioned in the operative part of the decision". The decision allows for no right of appeal, but it provides that an administrative dispute could be initiated before the Cantonal Court of Bihać within 30 days of receipt of the decision.

23. In addition, the applicant Vojislav Štrbac alleges that while carrying out the allocations of 25 August 1997, the Municipal authorities deliberately reduced and encroached upon the plot upon which he was building a new house (cadaster lot no. 13/38-5, which is not designated in the procedural decision of 25 August 1997). Later, however, the authorities rectified this encroachment (see paragraph 34 below).

24. On 15 March 1999, the applicant Vojislav Štrbac submitted a request to return to his real property in the Municipality of Bosanska Krupa.

25. On 8 June 1999 the Municipal Council issued a decision which determines the parameters for establishing compensation for seized building land. This decision is based upon Article 56 of the Law on Expropriation and Article 44 of the Law on Building Land (see paragraphs 44 and 48 below). It governs the parameters for establishing compensation for seized socially-owned building land located in the Municipality of Bosanska Krupa. The decision states that the amount of compensation to be paid to the former occupants of the seized building land is determined by applying a specified percentage (ranging from 2% to 1.4%), according to designated zones, to the base price of one square metre of newly-constructed socially-owned housing space as of the fourth quarter of the previous year. For 1999, the decision lists such base price as 1200 KM.

26. In April 2000, the applicants learned that part of their real property in the Municipality of Bosanska Krupa had been seized and allocated to other persons. On 4 April 2000, the applicant Vojislav Štrbac submitted to the Municipal Council a proposal for renewed proceedings in connection with the two procedural decisions of 25 August 1997. In that proposal, the applicant stated that he never received a copy of either procedural decision of 25 August 1997. He also stated that he has no knowledge of the "representative of the former possessor[s]", who was appointed to represent his interests in the proceedings leading up to the disputed decisions. Therefore, he was not given an opportunity to participate in the proceedings and his absence was used to his disadvantage to allocate his real property to others. The applicant noted that he had obtained income from the real property in dispute, which he had maintained as an orchard. Accordingly, the Municipality of Bosanska Krupa had deprived him of his right to earn an income and had threatened his ability to return to his real property. He emphasised that "as a possessor and occupant of these plots, [he had] a priority right to use the real property for the purpose of construction" and the decisions of 25 August 1997 deprived him of that right. Lastly, the applicant pointed out to the Municipal Council that he had obtained a license to construct a new house on cadaster lot no. 13/38-5, which he had partially constructed prior to the armed conflict. The applicant observed that half of that plot was seized and allocated to an unknown third person for construction. However, this plot of real property was not included in the decisions of 25 August 1997 and the applicant has no information on the manner of its allocation; consequently, the applicant has been prevented from taking any action to protect such real property. To date, the applicant Vojislav Štrbac has received no response to his proposal for renewed proceedings in connection with the two procedural decisions of 25 August 1997.

27. According to the applicant Vojislav Štrbac, as of the date of his application to the Chamber, six houses were in the process of being built on his real property.

28. On 31 August 2000, the Department for Property-Legal Affairs of the Administration for Urban Planning, Property-Legal, Geodetic, Cadastral and Housing-Communal Affairs of the Municipality of Bosanska Krupa (the "Department") conducted a hearing to attempt to determine amicably the amount of compensation for the undeveloped building land seized from the applicants. All the inheritors of the real property of the late Sava Štrbac (*i.e.*, the applicants) attended this hearing, with the exception of Vojislav Štrbac. The applicants proposed compensation in the amount of 50 KM per square metre of real property, plus compensation for perennial seeds planted on the real property in an amount to be determined by an expert. To allow for a necessary expert to attend, the hearing was then re-scheduled for 12 October 2000.

29. On 12 October 2000, the hearing to determine the compensation for the seized real property commenced once again. At the hearing, the applicants offered the Municipality of Bosanska Krupa to purchase the remainder of their land surrounding the seized land at the price of 50 KM per square metre. The applicants could not specify the precise square footage of this remaining land (approximately 3000 square metres) and they proposed that it be determined in an expert assessment by a land surveyor. According to the respondent Party, the applicants accepted the amount of 3,457 KM as compensation for the perennial seeds. However, the parties could not agree on the amount compensation for the seized real property. As a result, on 16 October 2000, the Department issued a proposal to transfer the case to the Court of First Instance in Bosanska Krupa, as the competent court to decide upon the amount of compensation in extra-judicial proceedings. This proposal was submitted to the Court on 29 November 2000.

30. On 16 October 2000, the Head of the Municipality of Bosanska Krupa issued an order to suspend all construction works on the real property in dispute in this case, thereby implementing the Chamber's order for provisional measures of 10 October 2000 (see paragraph 5 above). The respondent Party claims that decisions on eviction were also issued to the persons to whom the land was allocated. However, as confirmed by the respondent Party in its submission of 8 August 2001, sometime thereafter, the third party investors who had been allocated the land and who are paraplegic war veterans, acting under their own responsibility, undertook construction works for residential housing for paraplegics on the real property which is "burdened by a prohibition".

31. In response to the request of 15 March 1999 (see paragraph 24 above), on 12 March 2001, the Department for Property-Legal and Housing-Communal Affairs of the Service for Spatial Planning,

Property-Legal, Geodetic-Cadastre and Housing-Communal Affairs of the Municipality of Bosanska Krupa issued a procedural decision granting Vojislav Štrbac and others (*i.e.*, the applicants) the right to repossess the family house (on cadaster lot no. 13/37), which had previously been declared abandoned and allocated for temporary use. The decision describes the applicants as the "owners" of this family house, and it reasons that "the intention of the owner of the real property to return to his property is clear from the request for repossession". The decision further terminates the right of the temporary occupant to use the house and entitles him to alternative accommodation. However, according to the applicants, the family house is so devastated that it is not presently fit for habitation.

32. On 10 May 2001, the Court of First Instance in Bosanska Krupa conducted proceedings in connection with its determination of the amount of compensation owed to the applicants of the real property seized by the Municipality of Bosanska Krupa on 25 August 1997. In these proceedings, the Court ordered that expert assessments of the value of the seized real property be performed. The Court requested that the applicants pay the costs for the expert assessments in the amount of 1000 KM, but the applicants refused because they lacked the financial resources. The Municipality of Bosanska Krupa accepted the obligation to pay the cash advance for the expert assessments.

33. On 25 July 2001, the Court of First Instance in Bosanska Krupa held an on-sight investigation related to its determination of the amount of compensation owed to the applicants for the real property seized by the Municipality of Bosanska Krupa on 25 August 1997. Representatives of the applicants, the Municipality of Bosanska Krupa, and the experts were present at the investigation, which was conducted on the site of the seized real property. At that hearing, the Municipality of Bosanska Krupa offered to pay the applicants 69,192 KM in compensation for their seized undeveloped real property, in total 2883 square metres, calculated based on 24 KM per square metre. The respondent Party describes this amount as "the maximum amount of compensation per square metre". The applicants rejected this offer as an insufficient amount of compensation because it was much lower than the market value of the property. The Court allowed the experts 8 days to submit written expert reports on their findings related to the value of the seized real property. On 24 September 2001, a civil engineer submitted his expert findings and opinion on the value of the seized undeveloped building land. He relied upon the Municipal Council decision of 8 June 1999 which determined the parameters for establishing compensation for seized building land; thus, he concluded that the compensation per square metre must be 24 KM (*i.e.*, 2% of 1200 KM, the set price per square metre of newly-constructed buildings in the Municipality of Bosanska Krupa). Applying this price to the amount of undeveloped building land seized from the applicants, 2883 square metres, the civil engineer established the compensation amount to be 69,192 KM.

34. In September 2001, the applicant Vojislav Štrbac lodged a request for repossession of his partially constructed new house, which he claimed was being illegally occupied by his neighbours. On 5 August 2002, the Service for Spatial Planning, Property-Legal, Geodetic-Cadastre and Housing-Communal Affairs of the Municipality of Bosanska Krupa issued a procedural decision immediately returning possession of the real property located at Kolodvorska 33, Bosanska Krupa (including an orchard and a partially constructed new house) to its owner, the applicant Vojislav Štrbac. In addition, on 5 August 2002, the Urban Construction Inspector of the Municipality of Bosanska Krupa issued a procedural decision ordering Merzuk Ahmetspahić to demolish a fence he illegally constructed upon Vojislav Štrbac's real property.

35. On 13 May 2002, the Court of First Instance in Bosanska Krupa issued a procedural decision establishing the amount of compensation for the real property seized by the Municipality of Bosanska Krupa on 25 August 1997. The procedural decision states that 69,192 KM in compensation shall be paid to the applicants for their seized real property, plus an additional 3,487.50 KM in compensation for perennial fruit and nut trees, plus an additional 543.60 KM in compensation for a hedge. The Court of First Instance ordered the Municipality of Bosanska Krupa to pay these amounts to the applicants, plus statutory interest as of 25 August 1997, within 15 days after the procedural decision becomes legally valid and effective. In the reasoning, the Court of First Instance noted that the applicants had requested compensation of 50 KM per square metre of seized real property, but because the real property was socially-owned rather than privately-owned by the applicants, "they are not entitled to compensation according to the market price for the real property, but they are entitled to the awarded amount of compensation". The amount of compensation awarded was based upon

an expert assessment of the value of the undeveloped real property performed by a civil engineer on the basis of a decision on determining the parameters for establishing compensation for seized building land (see paragraph 25 above). Such decision was issued by the Municipal Council on 8 June 1999 and was based on, *inter alia*, Article 44 of the Law on Building Land and Article 56 of the Law on Expropriation. The Court of First Instance recalled that there had been no objections to the findings of the expert on the amount of compensation due for the perennial fruit and nut trees (and the lost income therefrom) and the hedge; therefore, it was "satisfied with the above finding".

36. Neither party filed an appeal against the procedural decision of 13 May 2002. Therefore, it became legally valid and effective on 2 July 2002. However, according to the applicant Vojislav Štrbac, the applicants have not received any compensation from the Municipality of Bosanska Krupa. The respondent Party states that the applicants have not filed a proposal to the Court of First Instance in Bosanska Krupa for execution of the compensation payment.

IV. RELEVANT LEGAL PROVISIONS

A. Law on Building Land of the Socialist Republic of Bosnia and Herzegovina

37. The Law on Building Land (Official Gazette of the Socialist Republic of Bosnia and Herzegovina — hereinafter "OG SRBiH" — nos. 34/86, 1/90, 29/90, 3/93, and 13/94) was applied in the former Socialist Republic of Bosnia and Herzegovina and the Republic of Bosnia and Herzegovina and is still applied in the Federation of Bosnia and Herzegovina. The Decree with force of law on the Amendments to the Law on Building Land (Official Gazette of the Republic of Bosnia and Herzegovina — hereinafter "OG RBiH" — no. 3/93) was confirmed as law on the basis of the Law on Confirming Decrees with the Force of Law (OG RBiH no. 13/94).

38. The Law on Building Land regulates the "conditions, manner and time of cessation of property rights over land situated in towns or settlements with an urban character and other areas envisaged for residential and other construction, as well as compensation for such land" (Article 1). The Law further regulates "principles of development and utilisation of socially and privately-owned building land" (Article 1). No right of ownership can exist over building land in a city or town, and building land cannot be alienated from social ownership, but rights defined by law may be gained over it (Articles 4, 5). The municipal authorities shall administer and dispose of building land in a manner and under the conditions provided by the Law and regulations issued pursuant to the Law (Article 6).

39. Article 21 defines the rights of former owners of urban building land, in pertinent part, as follows:

> "The former owner of urban building land is entitled to the following rights:
> - temporary right to use undeveloped urban building land until its seizure (hereinafter: temporary right to use land);
> - priority right to use undeveloped urban building land for the purpose of construction (hereinafter: priority right to construct upon land); …
>
> "A person whose right of ownership was registered in the cadaster, *i.e.*, a person whose right of ownership was established by a procedural decision issued by an organ designated in Article 14, paragraph 2 of this Law, during a time when building land was transferred into social-ownership, is considered as a former owner of undeveloped urban building land which becomes socially-owned after this Law enters into force.
>
> "A person whose right of ownership was registered in the land registry, *i.e.*, a person established to be the owner during a time when building land was transferred into social-ownership, is considered as a former owner of undeveloped urban building land which became socially-owned before this Law entered into force."

40. Article 22 concerns the temporary right to use undeveloped urban building land, as follows:

> "The former owner or the holder of the temporary right to use land is entitled to use undeveloped urban building land in a manner which will maintain its permanent purpose until it is seized from his possession.

"The holder of the temporary right to use land may construct a temporary structure to meet his needs on that land with approval of the responsible municipal administrative body.

"The holder of the temporary right to use land may relinquish undeveloped urban building land to another person for temporary use, but only for agricultural activities."

41. Article 25 provides for the seizure of undeveloped building land, as follows:

"The Municipal Assembly enacts decisions on the seizure of undeveloped urban building land for the purposes of permanent use, that is, for the purposes of development and construction.

"Decisions from the previous paragraph may also be enacted in case that the Municipal Assembly establishes the public interest for building temporary buildings in social ownership.

"In the proceedings for the seizure of land, a former owner or holder of a temporary right to use the land shall be heard.

"Decisions on seizure shall not allow for an appeal, but they shall allow for a possibility of filing an administrative dispute."

42. Article 28 concerns the priority right to construct on building land, as follows:

"The former owner holds the priority right to use land for the purpose of construction on a building plot permanently anticipated for the construction of a building over which he may hold a property right.

"The permanent right to use land for construction mentioned in the preceding paragraph shall be transferred and inherited along with the temporary right to use land.

"The priority right to use land for construction may not be obtained by:

"a) a former owner who has already obtained this right before the enactment of this Law;

"b) a former owner whose request for asserting this right has already been rejected by an effective procedural decision issued by the competent body."

43. Article 30 concerns the exercise of the priority right to construct on building land, as follows:

"The former owner, or his legal successors, may file a claim for the priority right to use building land at the latest at the hearing in the proceedings on the seizure of the undeveloped urban building land. A claim to assert the priority right to use land for the purpose of construction shall be decided by the municipal administrative body responsible for property - legal affairs.

"Even before the initiation of land seizure proceedings, the responsible body mentioned in paragraph one of this Article, may invite the former possessor to state whether he requests to obtain the priority right to use the land for construction. If there is such a request, then the proceedings shall be conducted under the regulations provided for by this Law."

44. Article 44 allows for compensation for seized undeveloped building land, as follows:

"The former owner of undeveloped urban building land, which was seized from his possession, is entitled to compensation.

"The former owner of undeveloped urban building land or his or her legal successor obtains the right to compensation upon the decision on seizure becoming final and effective or upon providing a statement from the former owner relinquishing the land in favour of the Municipality.

"The compensation for seized land shall be paid by the Municipality in the area where the land is located.

"The compensation shall be estimated and paid in accordance with the provisions of the Law on Expropriation — consolidated text (Official Gazette of SRBiH nos. 12/87, 38/89)."

45. Article 47 provides for the allocation of building land, as follows:

> "The Municipal Assembly allocates urban building land to legal persons for the purpose of building structures and to individuals for the purpose of building a residential building or a building of another type, to which they may assert a right of possession under the law.
>
> "A decision on the allocation of land for building purposes shall be enacted by the Municipal Assembly."

B. Law on Expropriation of the Socialist Republic of Bosnia and Herzegovina

46. The Law on Expropriation (OG SRBiH nos. 12/87, 38/89, 4/90; OG RBiH no. 15/94) establishes the legal framework for expropriation. According to Article 44 of the Law on Building Land, the provisions concerning compensation in the Law on Expropriation are also applicable when the right to use undeveloped building land is taken away (see paragraph 44 above).

47. In Chapter VII the Law sets out the regulations with respect to compensation for expropriated property. Article 49 sets out the general rule; namely, the market price shall be the determining factor in establishing the compensation to be paid for expropriated property. Articles 50 to 74 of the Law provide for a detailed regime on how to calculate the appropriate compensation for different kinds of property, *e.g.*, forests, orchards, fertile and infertile land or buildings.

48. Article 56 establishes, *inter alia*, the means of calculating the amount of compensation that shall be paid per square metre of socially-owned building land which has been seized from the former owner. That provision states, in pertinent part, as follows:

> "The compensation for 1 m2 [one square metre] of socially-owned building land, subject to seizure from the former owner, shall be determined by a percentage of the average established price formed in fourth quarter of the previous year for 1 m2 of residential space built in social ownership in that town, with the addition that the percentage may not be higher than 2% or lower than 1%.
>
> "The decision of Municipal Assembly, issued at the latest on 31 March of the current year, stipulates the percentage within the limitations set out in the previous paragraph.
>
> "The average established price set out in paragraph 1 of this Article shall be reassessed in the course of the year every three months on the basis of the index of increased construction prices for low construction and high-rise construction, according to the numeric methodology and data published by the Federal Institute for Statistics.
>
> "If the average price for 1 m2 of residential space built in social ownership has not been determined during the fourth quarter of the previous year because there has been no established residential construction at that time, then the compensation set out in paragraph 1 of this Article shall be determined by a percentage of the average price formed in the quarter of the previous year during which the price was determined, *i.e.*, by a percentage of the average established price formed in the fourth quarter of the year during which the price was determined. The price determined in such manner shall be reassessed as stipulated in the previous paragraph.
>
> "....
>
> "The former owner of the seized building land may be compensated, with his consent, by the allocation of other adequate land, which is not burdened with an ownership right."

49. Articles 75 to 87 of the Law prescribe the proceedings to determine compensation. According to Article 75, once the procedural decision on expropriation becomes legally valid and effective, the competent administrative organ of the municipality must without delay hold a hearing to effect an agreement on compensation for the property. If no agreement on compensation is reached within two months of the date on which the procedural decision on expropriation becomes legally

valid and effective, then the competent administrative organ of the municipality shall transmit the procedural decision and all the files to the competent regular court in the area in which the expropriated property is located for a determination of the compensation (Article 79). The competent court shall decide *ex officio* on the amount of compensation in extra-judicial proceedings. The court shall take into account the amount of compensation paid in similar cases in the same area where an agreement has actually been reached, provided that an agreement was reached in a majority of cases (Article 80). Article 84 describes the proceedings to determine compensation for expropriated real property as "urgent".

50. Article 85 of the Law provides that the beneficiary is obliged to pay the compensation to the former owner within 15 days after the court decision enters into force. If the previous owner refuses to accept undisputed compensation, then the beneficiary must deposit this undisputed compensation with the court within an additional 10 days. If the beneficiary fails to do so, then he must pay legal interest on the undisputed compensation to the previous owner.

C. Law on Administrative Procedure of the Federation of Bosnia and Herzegovina

51. The Law on General Administrative Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia — hereinafter "OG SFRY" — no. 47/86 (consolidated text)) became law in the Republic of Bosnia and Herzegovina on 11 April 1992 pursuant to the Decree with force of law on taking over the Law on General Administrative Procedure in the Republic of Bosnia and Herzegovina (OG RBiH nos. 2/92, 9/92, 16/92, and 13/94). Later this Law was replaced in the Federation of Bosnia and Herzegovina by the new Law on Administrative Procedure (OG FBiH nos. 2/98, 48/99), which entered into force on 28 January 1998.

52. Article 8 describes "the principle of hearing a party", as follows:

> "(1) Before making a decision, a party shall be given an opportunity to express his opinion on all facts and circumstances important for making the decision.
>
> "(2) A decision may be made without first giving an opinion only in cases when it is allowed by the law."

53. Article 54 provides for the appointment of a temporary representative, in pertinent part, as follows:

> "(1) If a process-wise incapable party does not have a legal representative or if an action is to be taken against a person whose place of residence is unknown and who does not have a proxy, the authority conducting the procedure will appoint a temporary representative for such a party, if so required by the urgency of the case and the procedure must be conducted. The authority conducting the procedure will immediately inform the custodial authority accordingly, and if a temporary representative is appointed for a person whose place of residence is unknown, it will display its conclusion upon a notice board or in some other usual manner. ...
>
> "(3) A temporary representative will also be appointed in the manner set forth in the provisions of Paragraphs 1 and 2 of this Article when an action which cannot be postponed is to be taken and it is not possible to timely invite the party or his/her proxy or representative. The party, proxy or representative will immediately be informed accordingly."

54. Article 83 provides for the mandatory delivery of court dispositions. Article 83(3) states as follows:

> "When a court disposition is delivered to a legal representative, an authorised agent, or an agent authorised to receive a court disposition (Article 88), it shall be considered as delivery to the party itself."

D. Decisions of the High Representative on State-Owned Real Property

1. Decision of 26 May 1999

55. On 26 May 1999, the High Representative issued a Decision suspending the power of local authorities in the Federation and the Republika Srpska to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities.

56. The Decision of 26 May 1999 states, in pertinent part, 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."

57. The Decision of 26 May 1999 entered into force immediately and remained in force until 31 December 1999. On 31 December 1999, the High Representative extended the validity of the Decision of 26 May 1999 until 30 June 2000.

2. Decision of 27 April 2000

58. On 27 April 2000, the High Representative issued a Decision on state-owned real property (Official Gazette of Bosnia and Herzegovina — hereinafter "OG BiH" — no. 13/00; Official Gazette of the Federation of Bosnia and Herzegovina — hereinafter "OG FBiH" — no. 17/00; Official Gazette of the Republika Srpska — hereinafter "OG RS" — no. 12/00). The Decision of 27 April 2000 revoked and superseded the Decision of the High Representative of 26 May 1999 and the Decision of 31 December 1999, which extended the Decision of 26 May 1999.

59. The Decision of 27 April 2000 states, in pertinent part, as follows:

> "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 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work. …
>
> "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 interest 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."

60. The Decision of 27 April 2000 entered into force immediately and remained in force until 31 December 2000. On 20 December 2000, the High Representative extended the validity of the Decision of 27 April 2000 until 30 March 2001 (OG BiH no. 34/00; OG FBiH no. 56/00; OG RS no. 44/00). On 30 March 2001, the High Representative again extended the validity of the Decision of 27 April 2000 until 31 July 2002 (OG BiH no. 11/01; OG FBiH no. 15/01; OG RS no. 17/01).

61. On 31 July 2002, the High Representative issued another Decision further extending the Decision of 27 April 2000 until 31 March 2003 (OG BiH no. 24/02 of 29 August 2002; OG RS no. 49/02 of 13 August 2002). The Decision of 31 July 2002 adds the following statement:

> "Further, by means of the adoption of harmonized legislation regulating the transfer and disposal of state-owned real property, including socially-owned property, by a date as early as possible prior to 31 March 2003, the authorities of Bosnia and Herzegovina and its entities are to assume full responsibility for ensuring the 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. COMPLAINTS

62. In the application, the applicants allege that their rights protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention have been violated. With respect to Article 1 of Protocol No. 1 and Article 8, the applicants argue that the respondent Party deprived them of their right to use and dispose of real property, which they primarily maintained as orchards, including a part of the real property the applicant Vojislav Štrbac and his family used as their home prior to the armed conflict. They allege that such deprivation of real property was not in accordance with domestic law because they possessed the right to use and the priority right to construct upon the real property. The Municipality of Bosanska Krupa failed to take these rights into account when, on 25 August 1997, it seized and allocated a part of the real property to third parties for the construction of residential housing. In addition, the applicants submit that the allocation of their real property by the Municipality of Bosanska Krupa is null and void pursuant to the Decision of the High Representative (of 26 May 1999, as superseded by the Decision of 27 April 2000). As a result of this illegal deprivation of their real property, the applicant Vojislav Štrbac claims he has also been deprived of the opportunity to obtain an income from the orchards. With respect to Article 6, the applicants argue that the respondent Party offered them no opportunity to participate in the proceedings which resulted in the seizure of their real property on 25 August 1997, and thereafter, the respondent Party prevented them from obtaining information concerning those proceedings.

63. The applicants ask the Chamber to return them into possession of their real property seized on 25 August 1997, so that they may once again live in the family home and maintain orchards on the property. In the alternative, the applicants ask the Chamber to provide them with just compensation for their seized real property, calculated according to the market price of property in the Municipality of Bosanska Krupa. The applicant Vojislav Štrbac expressly does not include his former home or partially constructed new house in this request for compensation.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

64. In its submissions of 13 November 2000, the respondent Party argues that its organs fully complied with the Law on Building Land; therefore, the Chamber should withdraw its pending order for provisional measures of 10 October 2000. In the letter of the Ministry of 22 June 2001, the respondent Party further argues that the Chamber's order for provisional measures should be withdrawn so that the Municipality of Bosanska Krupa may carry out its obligation to provide housing for paraplegics, who are vulnerable persons under the law, and so that the interests of the investors, *i.e.*, the paraplegics, in those constructions may be protected.

65. With respect to admissibility, the respondent Party argues that at the time of the application to the Chamber, the applicants had failed to exhaust effective domestic remedies in accordance with Article VIII(2)(a) of the Agreement because they had not initiated proceedings before the Court of First Instance in Bosanska Krupa for compensation for damages for the real property seized from them. Subsequently, the Municipality of Bosanska Krupa initiated such court proceedings, and they were still in progress at the time of the application. The respondent Party further argues that the application was not submitted within six months from the date of the final decision in dispute. Such

decision of 25 August 1997 became legally valid and effective on 6 October 1997. Accordingly, the applicants should have filed their application with the Chamber by 6 May 1998,[1] rather than 27 months later in September 2000.

66. The respondent Party also submits that the application is ill-founded on the merits. According to the respondent Party, there can be no violation of Article 6 of the Convention because in the proceedings leading up to the decisions of 25 August 1997, the applicants were represented by a temporary representative in accordance with Article 54 of the Law on Administrative Procedure. With respect to Article 8 of the Convention, the respondent Party argues that the real property in dispute cannot be considered the "home" of the applicant Vojislav Štrbac because the plot of real property upon which he commenced construction of a new house was not included within the decisions of 25 August 1997. Moreover, the organs of the respondent Party acted in compliance with paragraph 2 of Article 8 of the Convention. Lastly, the respondent Party argues that there has been no violation of Article 1 of Protocol No. 1 because the Municipality of Bosanska Krupa, in accordance with the Law on Building Land, had the exclusive right of administration and disposal of urban building land. In seizing the real property in question from the applicants, the Municipality of Bosanska Krupa fully complied with the law.

67. In its response of 22 December 2000 to the applicants' claim for compensation for pecuniary damages, the respondent Party argues that the compensation claim is ill-founded. The respondent Party highlights that proceedings were in progress to determine the issue of compensation for the real property seized from the applicants. Moreover, the respondent Party notes that the applicants have not presented any evidence of the value of their seized real property. The respondent Party also objects to the applicants' request for compensation for the destruction of 1000 square metres of real property as ill-founded and unsubstantiated. Lastly, in the proceedings to determine the issue of compensation, the respondent Party submits that the applicants accepted the amount of 3,457 KM as compensation for their perennial seeds planted on the real property. Therefore, the corresponding claim for compensation from the Chamber for perennial seeds has been resolved or is otherwise imprecise or unsubstantiated.

68. In its submission of 10 October 2001, the respondent Party states that "the desire of the Municipality of Bosanska Krupa is to pay compensation to Vojislav Štrabc and others for possible inflicted damage". This is necessary so that the Municipality of Bosanska Krupa may satisfy its obligation to assist paraplegics, who are a vulnerable part of society. However, the Municipality of Bosanska Krupa claims it can only pay compensation in accordance with Article 56 of the Law on Expropriation. The respondent Party states that it "shall take every step to reach an amicable solution with the applicant[s]".

B. The applicants

69. In the applicants' submissions of 21 November 2000, they confirm that they maintain their complaints in full. They consider that the Chamber's order for provisional measures of 10 October 2000 is completely justified. They point out that the persons to whom the Municipality of Bosanska Krupa allocated their real property possessed other property before the armed conflict and their rights to return into possession of or reconstruct their pre-war property has not been interfered with by the Chamber's order.

70. With respect to admissibility, the applicants contend that they have no available effective domestic remedies to exhaust. The procedural decision of 25 August 1997, which seized their real property, became legally valid and effective on 6 October 1997. However, the applicants state that they did not become aware of this decision or the decision on allocation of their real property until April 2000. At that time, their only possible course of action was to file a proposal for renewed proceedings with the Municipal Council, which Vojislav Štrbac did on 4 April 2000. To date, the Municipality of Bosanska Krupa has not responded to that proposal. The applicants submit that they could not file an administrative dispute with the Cantonal Court in connection with the decisions of 25 August 1997. In such a situation, the applicants argue that "it is illusory to speak of the

[1] Due to a mistake in calculating the date on which the decision of 25 August 1997 became legally valid and effective, the respondent Party stated the date for filing the application with the Chamber as 6 May 1998, but most likely it intended to state that date as 6 April 1998.

effectiveness of legal remedies". With respect to the six months rule, the applicants note that they timely filed their application with the Chamber within six months from the date upon which they discovered the violation of their rights in April 2000.

71. The applicants argue that there has been a violation of their right to access to a court as protected by Article 6 of the Convention. The applicants, who were co-users/co-possessors of the real property in question, were not included in the administrative proceedings in dispute, nor were they provided with any information about these proceedings. The applicants submit that "the alleged temporary representative in these proceedings represents only a farce and a safe way for the respondent Party to obtain a valid and effective decision without offering the applicant and other co-[possessors/users] with a real opportunity to have their rights protected by a temporary representative". The applicants confirm that they possessed houses on their real property in Bosanska Krupa, and the challenged acts of interference have prevented their access to their homes, thereby constituting a violation of their rights protected by Article 8 of the Convention. With respect to Article 1 of Protocol No. 1, the applicants contend that the respondent Party has not complied with the requirements of the Law on Building Land in issuing the decisions of 25 August 1997 because the respondent Party has failed to take into account the applicants' right to use and priority right to construct upon the real property in question. Rather, the respondent Party took advantage of the applicants' absence from their real property due to the armed conflict, and illegally seized and allocated their real property to third parties. In addition, the respondent Party acted in contravention to the Decision of the High Representative on the allocation of state-owned real property to third parties by a municipality.

72. In the submission of 2 October 2001, the applicants argue, in essence, that the proceedings to seize and allocate their real property and the later proceedings to determine the compensation for the seized property resulted in the violation of their rights due to their ethnic origin as Serbs. Firstly, they point out that their real property was seized *in absentia* while they were displaced persons and it was allocated to persons of Bosniak origin. They allege that real property possessed by certain named Bosniaks, presumably their former neighbours in the Municipality of Bosanska Krupa, has not been similarly seized, even though they possess a greater quantity of property. Secondly, the authorities participating in the proceedings to determine the amount of compensation "humiliated" the applicants and treated them as "lower class citizens". For example, according to the applicants, in the proceedings on 25 July 2001, the judge "was chewing gum all the time and treated [the applicants] as if [they] did not exist". During the on-site investigation, the land surveyor allegedly repeatedly measured the seized part of the real property (2883 square metres), but refused to measure the entire property (some 6000 square metres), as requested by the applicants, unless the applicants paid 1000 KM. The applicants "felt that they made a mockery of us because they drew a line on the land and then stepped and wiped it with their feet". Thirdly, the applicants highlight the failure of the Municipal authorities to in fact implement and comply with the Chamber's order for provisional measures of 10 October 2000. Rather, the five persons of Bosniak origin who were allocated the real property have been allowed to continue construction of houses on the applicants' real property.

VII. OPINION OF THE CHAMBER

A. Admissibility

73. Before considering the merits of this application, the Chamber must decide whether to accept it, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the [Chamber] within six months from such date on which the final decision was taken".

1. Exhaustion of domestic remedies

74. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights (the "European Court") 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 European 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.

75. The respondent Party argues that prior to submitting their application to the Chamber, the applicants should have initiated proceedings before the Court of First Instance in Bosanska Krupa for compensation for damages for the real property seized from them on 25 August 1997. However, the Chamber observes that the essence of the applicants' complaints are that their human rights, as protected by the Convention, were violated firstly, when the Municipality of Bosanska Krupa conducted the proceedings leading to the seizure and allocation of their real property *in absentia* of the applicants and secondly, when the Municipality of Bosanska Krupa, as a result of those proceedings, seized and allocated their real property to third parties in violation of domestic law. Proceedings before the Court of First Instance to determine an amount of compensation for the seized real property cannot address the alleged violations of the applicants' human rights.

76. The Chamber notes that no appeal was allowed against the procedural decision of 25 August 1997 which seized the applicants' real property. The applicants were incapable of filing an administrative dispute before the Cantonal Court of Bihać because they were unaware of the decision, and "the representative of the former possessor[s]" filed no such administrative dispute in their absence. As a result, the decision became legally valid and effective on 6 October 1997 *in absentia* of the applicants. Moreover, the Chamber notes that on 4 April 2000, the applicant Vojislav Štrbac submitted a proposal for renewed proceedings before the Municipal Council in connection with the procedural decisions of 25 August 1997. No response has been received to this proposal.

77. Taking these facts into account, the Chamber concludes that the applicants have exhausted available effective domestic remedies, within the meaning of Article VIII(2)(a) of the Agreement.

2. Six-month rule

78. Under the six-month rule contained in Article VIII(2)(a) of the Agreement, an application must be filed with the Chamber within six months from the date of the challenged final decision. The Chamber has, however, a certain discretion to take into account special circumstances which might prevent an applicant from submitting an application within this six-month period, particularly when an applicant provides an adequate explanation for this failure (see case no. CH/99/1433, *Smajić,* decision on admissibility of 4 November 1999, paragraphs 16-17, Decisions August-December 1999).

79. In this case, the final procedural decisions which seized and allocated the applicants' real property were issued by the Municipal Council on 25 August 1997. However, the proceedings leading up to the issuance of these decisions were conducted *in absentia* of the applicants. Prior to 25 August 1997, the Municipality of Bosanska Krupa made no efforts to locate the applicants. According to the decision on the seizure of the real property, the interests of the applicants were represented by a "representative of the former possessor[s]" because the whereabouts of the applicants were unknown to the Municipal Council. A copy of the decision was also provided to "the representative of the former possessor[s]", but there is no evidence in the case file before the Chamber to indicate that the respondent Party took any further action to ensure that the applicants were made aware of the procedural decisions of 25 August 1997.

80. The Chamber notes that due to the armed conflict, the applicants were forced to leave the Municipality of Bosanksa Krupa and to re-locate as displaced persons in the Republika Srpska. The applicants have stated that prior to April 2000, they had no knowledge of the proceedings or the decisions of 25 August 1997. Immediately thereafter, the applicant Vojislav Štrabac filed, on 4 April 2000, a proposal for renewed proceedings with the Municipal Council. He has received no response to date to this proposal. On 22 September 2000, less than six months after the date upon which the applicants learned about the seizure and allocation of their real property, the applicant Vojislav Štrbac submitted the application to the Chamber.

81. Under the circumstances, the Chamber regards it as disingenuous and nearly absurd for the respondent Party to raise an objection to the application based upon the six-month rule. In such a situation where the proceedings were conducted *in absentia* of the applicants, the applicants were represented in those proceedings by an unknown legal representative appointed by the respondent Party, and the applicants had no knowledge, official or unofficial, of the issuance of the final decisions, the Chamber considers that the six-month rule began to run when the applicants first learned about the final decisions in April 2000. As the applicant Vojislav Štrbac filed the application with the Chamber within six months after April 2000, the application satisfies the requirements of the six-month rule, within the meaning of Article VIII(2)(a) of the Agreement.

82. As no other grounds for declaring the application inadmissible have been raised or appear from the application, the Chamber declares the application admissible in whole.

B. Merits

83. Under Article XI of the Agreement, the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article 1 of the Agreement, the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the Convention and the other international agreements listed in the Appendix to the Agreement.

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

84. Article 1 of Protocol No. 1 to the Convention states 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."

85. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is of a general nature, enshrines the principle of peaceful enjoyment of property. It is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to the condition that the deprivation must be in the public interest and subject to conditions provided for by law and by the general principles of international law. It appears in the second sentence of the same paragraph. The third rule recognises that States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for that purpose. It is contained in the second paragraph (see, *e.g.*, case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions January-July 1999).

a. Existence of a "possession"

86. The European Court has stated repeatedly that "the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other rights and interests constituting assets can also be regarded as 'property

rights', and thus as 'possessions' for the purposes of this provision" (Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 96, paragraph 54).

87. The Chamber has recognised that where previous structures existed, the right to use property for reconstruction is an enforceable right under domestic law, which may be considered a 'possession' within the meaning of Article 1 of Protocol No. 1 (see case no. CH/98/704, *Jovanka Kovačević*, decision on admissibility and merits of 8 January 2002, paragraphs 55-60, Decisions January-June 2002; case no. CH/99/2656, *Islamic Community in Bosnia and Herzegovina*, decision on admissibility and merits of 5 December 2000, paragraph 111, Decisions July-December 2000). The Chamber has not previously addressed the question at issue in this case: whether the right to use and the priority right to construct upon undeveloped real property constitute a 'possession' (*but see* case no. CH/99/2628, *Šišić and others*, decision on admissibility of 8 March 2000, paragraph 16, Decisions January-June 2000 (concerning the right to use socially-owned building land as a sports centre)).

88. The Chamber notes that in accordance with the Law on Building Land (see paragraphs 37-45 above), the applicants are considered to be the "former owners" of the undeveloped urban building land previously owned by or in the possession of their parents, Uroš and Sava Štrbac, situated in the Municipality of Bosanska Krupa. As explained above, the applicants' property rights to this real property were established in the decisions on inheritance of 1965 and 1990, respectively, by the Court of First Instance in Bosanska Krupa (see paragraphs 17-18 above). As former owners, Article 21 of the Law on Building Land provides that the applicants are entitled to the temporary right to use undeveloped building land until its seizure and to the priority right to construct upon undeveloped urban building land. According to Article 28, the priority right to construct upon building land may be transferred and inherited along with the temporary right to use building land. Article 30 further provides that the former owner has the right to file a claim for the priority right to construct upon undeveloped urban building land, at the latest at the hearing on the seizure of the building land.

89. The Chamber observes that the character of the priority right to construct upon undeveloped building land, as defined in the domestic law, indicates that it is a valuable, transferable property right. Under domestic law, former owners have considerable property rights in nationalised undeveloped building land previously owned by them, and in fact, the quality of these property rights is closely related to ownership rights. Therefore, as in its previous cases concerning the priority right to construct upon developed building land, the Chamber finds that the priority right to construct upon undeveloped urban building land is an enforceable right with an economic value which is a "possession" within the meaning of Article 1 of Protocol No. 1.

b. Principle of lawfulness

90. Regardless of which of the three rules set forth in Article 1 of Protocol No. 1 is applied in a given case (*i.e.*, interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1. The European Court has explained as follows:

> "The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possession should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only 'subject to the conditions provided for by law' and the second paragraph recognises that the States have the right to control the use of property by enforcing 'laws'. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and entails a duty on the part of the State or other public authority to comply with judicial orders or decisions against it. It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary" (Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 97, paragraph 58).

91. In *Iatridis v. Greece*, the applicant leased an open-air cinema and acted as its owner. Several years later, the Government informed the applicant that his cinema had been built on State property. Three additional years later, the Government assigned the cinema to a certain town council and issued an administrative eviction order that deprived the applicant of his right to use and possess the cinema. For nearly ten years, the applicant challenged the assignment and eviction order through various judicial and administrative procedures. Although the eviction order was eventually quashed, the assignment was not revoked, so the applicant was not able to regain possession of his cinema. Whilst considering the applicant's complaint under Article 1 of Protocol No. 1, the European Court observed that the issue of ownership of the cinema remained disputed. None the less, the European Court found that the applicant had operated the cinema under a valid lease for many years, and as a result, he had built up a clientele that constituted a protected 'possession' (*id.* at paragraph 54). With respect to the legality of the Government's actions, the European Court noted that at the time, the applicant's eviction had had a legal basis in domestic law. However, later the competent court quashed that legal eviction order. "From that moment on, the applicant's eviction thus ceased to have any legal basis and [the town council] became an unlawful occupier and should have returned the cinema to the applicant" (*id.* at paragraph 61). Consequently, the European Court concluded that "the interference in question is manifestly in breach of Greek law and accordingly incompatible with the applicant's right to the peaceful enjoyment of his possessions" (*id.* at paragraph 62).

92. Similarly, in the present case, there was arguably a valid basis in domestic law for the procedural decisions issued by the Municipal Council on 25 August 1997. However, in accordance with the Law on Building Land, the applicants possessed the priority right to build upon the undeveloped urban building land they were maintaining as an orchard. The Law requires the Municipality to provide a former owner with an opportunity to exercise his priority right to construct upon undeveloped urban building land, at the latest in the proceedings on the seizure of that building land. In this case, there was no actual opportunity for the applicants to exercise such right since the Municipality of Bosanska Krupa seized and allocated the real property *in absentia* of the applicants, although the Municipality of Bosanska Krupa did invite a temporary representative who was unknown to the applicants to protect their rights in those proceedings. The Chamber notes that the manner in which those proceedings were conducted calls into question the propriety of the procedural decisions of 25 August 1997 under the Law on Building Land and the Law on Administrative Procedures.

93. Moreover, on 26 May 1999, the High Representative issued a Decision which took priority over the respective provisions of the Law on Building Land and rendered the procedural decisions of 25 August 1997 null and void (see paragraphs 55-57 above). The Decision of 26 May 1999 was later revoked and superseded by the Decision of 27 April 2000, which remains in force and contains substantially similar provisions (see paragraphs 58-61 above). The Chamber observes that the facts of this case fall squarely within the Decisions of the High Representative. Therefore, as of 26 May 1999, the procedural decisions of 25 August 1997, which seized and allocated the applicants' real property to third parties, ceased to be valid and are null and void. As of that date, the respondent Party's insistence to act upon the decisions of 25 August 1997 was not in compliance with the applicable law.

94. In addition, not only did the respondent Party fail to comply with the Decisions of the High Representative of 26 May 1999 and 27 April 2000, it further failed to comply with the Chamber's order for provisional measures of 10 October 2000, which prohibited all construction works on the applicants' real property by any institution or person, whether public or private (see paragraph 5 above). Despite the Chamber's order, construction works continued on the applicants' real property. On 8 August 2001, the respondent Party confirmed that such construction works were in progress by the third party investors who had been allocated the land on 25 August 1997. It appears from the case file before the Chamber that the respondent Party has taken no action to prevent such construction works by the third parties even though it is fully aware of them. The Chamber considers that such blatant disregard for the Chamber's order for provisional measures constitutes an aggravated breach of the principle of lawfulness by the respondent Party.

95. Since the respondent Party has failed to satisfy the principle of lawfulness contained within Article 1 of Protocol No. 1, it is unnecessary for the Chamber to consider further the remaining requirements of this Article.

c. Conclusion as to Article 1 of Protocol No. 1 to the Convention

96. The Chamber concludes that the applicants' priority right to construct upon their previously undeveloped real property situated in the Municipality of Bosanska Krupa constitutes a protected possession, within the meaning of Article 1 of Protocol No. 1. In issuing the procedural decisions of 25 August 1997, which seized and allocated the applicants' real property to third parties, the respondent Party failed to fully comply with domestic law. In addition, by continuing to implement the procedural decisions after 26 May 1999, the respondent Party has contravened the Decision of the High Representative of that date and the subsequent Decision of 27 April 2000; thus, it has failed to act lawfully. The respondent Party has further failed to implement the Chamber's order for provisional measures of 10 October 2000. Accordingly, the Chamber decides that the respondent Party has violated the applicants' right as guaranteed by Article 1 of Protocol No. 1 to the Convention.

2. Article 8 of the Convention

97. Article 8 of the Convention states as follows:

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

98. Taking into consideration its conclusion that the respondent Party has violated the applicants' right protected by Article 1 of Protocol No. 1 to the Convention, the Chamber decides that it is not necessary separately to examine the application under Article 8 of the Convention.

3. Article 6 of the Convention (right to access to a court)

99. Paragraph 1 of Article 6 of the Convention states 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

100. In *Golder v. United Kingdom*, the European Court recognised that "the right of access constitutes an element which is inherent in the right stated by Article 6 § 1" (Eur. Court HR, judgment of 21 February 1975, Series A no. 18, page 18, paragraph 36). The European Court elaborated:

> "It would be inconceivable, in the opinion of the Court, that Article 6 § 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings. ...
>
> "[T]he Article embodies the 'right to a court', of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing" (*id.* at page 18, paragraphs 35-36).

101. However, the right of access to a court enshrined in Article 6 is not absolute; it may be subject to certain limitations since the right "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals" (Eur. Court HR, *Ashingdane v. United Kingdom*, Series A no. 93, page 24, paragraph 57). None the less, the limitations "must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired" (*id.*). "Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (*id.*).

102. In the present case the Chamber observes that the Municipality of Bosanska Krupa conducted the proceedings leading up to the seizure and allocation of the applicants' real property *in absentia* of the applicants. In accordance with domestic law, the Municipality of Bosanska Krupa appointed a temporary "representative of the former possessors" to represent the interests of the applicants in those proceedings because it claimed their whereabouts were unknown. However, the respondent Party admits that the Municipality of Bosanska Krupa made no attempts to locate the applicants. As explained above, the result of the proceedings was that the Municipality of Bosanska Krupa issued the procedural decisions of 25 August 1997, which seized and allocated the real property in question, despite the applicants' right to use and priority right to construct upon the property. The temporary representative raised no objections in the proceedings. Moreover, he filed no administrative dispute against the procedural decisions, which were clearly adverse to the applicant's interests. As a result, the decisions became legally valid and effective on 6 October 1997 *in absentia* of the applicants (see paragraphs 19-22 above). When the applicants learned about these decisions in April 2000, it appears they had no right under domestic law to challenge them. The applicant Vojislav Štrbac did file on 4 April 2000 a proposal for renewed proceedings before the Municipal Council, but the Municipality of Bosanska Krupa has not responded to that proposal to date (see paragraph 26 above).

103. The Chamber recognises that in certain circumstances it may be reasonable and necessary for the domestic authorities to conduct proceedings *in absentia* of an interested party. In such circumstances, Article 54(1) of the Law on Administrative Procedure provides for the appointment of a temporary representative of an interested party whose place of residence is unknown (see paragraph 53 above). However, as the European Court has said in *Colozza v. Italy*, when the domestic law provides that proceedings may be conducted *in absentia* of an interested party, "that person should, once he becomes aware of the proceedings, be able to obtain, from a court which has heard him, a fresh determination of the merits of the charge" (Eur. Court HR, judgment of 12 February 1985, Series A no. 89, page 15, paragraph 29). In the present case, the applicants have been given no actual opportunity to participate in the proceedings which unlawfully deprived them of their property rights, and the temporary representative appointed on their behalf by the Municipality of Bosanska Krupa may not, it appears, have adequately protected their interests. Nor has the Municipality of Bosanska Krupa responded to the applicants' proposal for renewed proceedings, which was submitted over two years ago.

104. In these circumstances, the Chamber considers that the respondent Party has failed to provide the applicants with access to a court for the determination of their property rights. Therefore, the Chamber finds that the respondent Party has violated the applicants' rights as guaranteed by paragraph 1 of Article 6 of the Convention.

4. Discrimination

105. In connection with Article II(2)(b) of the Agreement, the Chamber finds it appropriate in this case to consider whether the respondent Party has discriminated against the applicants with respect to their property rights. The Chamber has already established that the respondent Party has violated the rights of the applicants to peaceful enjoyment of possessions as protected by Article 1 of Protocol No. 1 to the Convention (see paragraphs 84-96 above).

106. Article II(2)(b) of the Agreement provides as follows:

> "[T]he Human Rights Chamber shall consider ... alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority or such official or organ".

107. In the submission of 2 October 2001, the applicants allege that they have been discriminated against in the enjoyment of their human rights due to their ethnic or national origin as Serbs (see paragraph 72 above). The Chamber sent this submission to the respondent Party on 11 December 2001, but the respondent Party did not present any contrary observations on the discrimination claim. Therefore, these allegations of discrimination remain uncontested in the case file before the Chamber.

108. With respect to their discrimination claim, the applicants highlight that the Municipality of Bosanska Krupa seized their real property on 25 August 1997 *in absentia* while they were displaced persons due to the armed conflict in Bosnia and Herzegovina. According to the applicants, the Municipality did not seize similarly situated real property possessed by their neighbours, who are of Bosniak origin and who remained in Bosanska Krupa. After the seizure, the respondent Party admits that the Municipality of Bosanska Krupa re-allocated the applicants' real property to paraplegic war veterans of Bosniak origin. Moreover, in the proceedings to determine the amount of compensation for the seized real property, the applicants state that the authorities "humiliated" them and treated them as "lower class citizens". The applicants felt that the authorities "made a mockery" of them.

109. In examining whether there has been discrimination contrary to the Agreement, the Chamber recalls its jurisprudence. As the Chamber noted in its decision in *Đ.M v. the Federation of Bosnia and Herzegovina* (case no. CH/98/756, decision on admissibility and merits of 13 April 1999, paragraph 72, Decisions January-July 1999), it is necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations. Any differential treatment shall be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin (*see Jusufović,* case no. CH/98/698, decision on admissibility and merits of 10 May 2000, paragraph 115, Decisions January-June 2000).

110. The Chamber recalls that the obligation of the Parties to the Agreement to "secure" the rights and freedoms mentioned in the Agreement to all persons within their jurisdictions not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (*see Đ.M.* at paragraph 75).

111. In this case, rather than securing the applicants' human rights, the Municipality of Bosanska Krupa took advantage of the applicants' status as displaced persons. The Chamber observes a pattern of discrimination against the applicants, all of Serb origin living in a majority Bosniak municipality: Firstly, on 25 August 1997, the Municipality of Bosanska Krupa seized the applicants' real property while they were displaced persons. Secondly, the Municipality of Bosanska Krupa did not provide the applicants with any real opportunity to participate in the proceedings resulting in the seizure of their real property, but rather, it assigned a temporary representative of Bosniak origin to represent their interests so that it could seize the real property *in absentia* of the applicants. That representative failed to file an administrative dispute against the procedural decision on seizure of the real property, which was clearly adverse to the applicants' property rights. Thirdly, the Municipality of Bosanska Krupa allocated the seized real property to five paraplegic war veterans of Bosniak origin for the construction of residential housing, and after the Decision of the High Representative of 26 May 1999 (as superseded by the Decision of 27 April 2000), it continued to insist upon and implement this "null and void" allocation. Fourthly, in violation of the Chamber's

order for provisional measures of 10 October 2000, the Municipality of Bosanska Krupa failed to take any action to prevent further construction upon the applicant's real property, and as a result, five residential homes have now been built upon the property. Lastly, the Municipality of Bosanska Krupa has not yet in fact compensated the applicants for real property which it seized five years ago, even though the Law on Expropriation describes the determination of compensation for seized real property as "urgent" (see paragraph 49 above).

112. In the Chamber's view, the Municipality of Bosanska Krupa has failed to respect or uphold the rule of law, and in so doing, it has prevented the applicants, who are displaced persons of Serb origin and the former owners, from returning to and using their seized real property. Now this real property is in the possession of war veterans of Bosniak origin and it has been developed. Assuming the Municipality of Bosanska Krupa eventually pays the compensation to the applicants for their seized real property (as determined in the procedural decision of 13 May 2002), it will have achieved this shift of possession from minority Serbs to majority Bosniaks at a price which the applicants claim is less than half the market value of the land; such price being based upon a decision establishing the parameters for the compensation issued by the Municipal Council two years after the seizure.

113. Based on the record before the Chamber, the Chamber finds that the applicants have been deprived of their possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention, on the ground that they are displaced persons of Serb origin from a predominantly Bosniak municipality. The respondent Party has provided no reasonable or objective justification for this treatment, and the Chamber can find no such justification on its own. Therefore, the Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights protected by Article 1 of Protocol No. 1 to the Convention.

5. Conclusion as to merits

114. In summary, the Chamber finds that the respondent Party has violated the human rights of the applicants protected by Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention. The Chamber further finds that the respondent Party has unjustifiably discriminated against the applicants with respect to their property rights.

VIII. REMEDIES

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

116. The applicant has requested that the Chamber return him into possession of his real property situated in the Municipality of Bosanska Krupa, which was seized on 25 August 1997, so that he may once again live in his family home and maintain orchards on the property. In the alternative, the applicant seeks compensation for pecuniary damages in the total amount of 199,150 Convertible Marks (*Konvertibilnih Maraka*, "KM"), including 144,150 KM for deprivation of real property (calculated at 50 KM per square metre of real property), 5000 KM for deprivation of perennial seeds planted on the real property, and 50,000 KM for destruction of 1000 square metres of real property. The applicant considers that 50 KM per square metre is a fair market price for his seized real property, rather than 24 KM per square metre, as suggested by the Municipality of Bosanska Krupa and as determined by the Court of First Instance in Bosanska Krupa in the procedural decision of 13 May 2002.

117. The Chamber recalls that in its former decision concerning the mosques in Zvornik, it found that it would not be appropriate under the circumstances to order demolition of buildings constructed upon disputed real property previously owned or possessed by the applicant (case no. CH/98/1062, *Islamic Community in Bosnia and Herzegovina*, decision on review of 4 September 2001, Decisions July-December 2001, paragraphs 28 and 33). Instead, in that case the Chamber ordered the Republika Srpska to provide a remedy to the Islamic Community for the violation of its human rights

by allocating other suitable and centrally located building land in the town of Zvornik and by paying compensation for pecuniary and non-pecuniary damages (*id.* at paragraphs 29, 34, 37, and 38).

118. Similarly, in *Jovanka Kovačević v. the Federation of Bosnia and Herzegovina*, the authorities re-allocated real property upon which previous structures in the possession of the applicant had existed. After that re-allocation, the new possessor built a new house on the real property. After finding that the applicant had been improperly deprived of her right to use and priority right to construct upon the real property in question, the Chamber ordered the Municipality of Sanski Most to provide a remedy to the applicant by allocating other city building land of "equivalent size, value and quality" to the applicant (case no. CH/98/704, *Kovačević*, decision on admissibility and merits of 8 January 2002, Decisions January-June 2002, paragraphs 61-67 and 71-73).

119. In accordance with its previous practice, the Chamber finds that it would not be appropriate under the circumstances to order that the seized real property, upon which five new houses have been constructed by the persons who were allocated the land, be returned into the applicants' possession. This real property, which was previously undeveloped and maintained as orchards, has now been developed and it is being used for necessary residential housing for war veterans. Moreover, in the procedural decision of 13 May 2002, the Court of First Instance in Bosanska Krupa has determined that compensation in the amount of 69,192.00 KM shall be paid to the applicants for their seized real property. In addition, 3,487.50 KM shall be paid to the applicants as compensation for perennial fruit and nut trees, plus 543.60 KM as compensation for a hedge (see paragraph 35 above).

120. None the less, the applicants must be provided with a remedy for the violation of their human rights protected by Article 1 of Protocol No. 1 and Article 6 of the Convention and Article II(2)(b) of the Agreement. In determining the proper remedy, the Chamber takes particular notice of the aggravating facts that the Municipality of Bosanska Krupa has failed to act in accordance with the Decisions of the High Representative of 26 May 1999 and 27 April 2000 and with the Chamber's order for provisional measures of 10 October 2000. Moreover, it blatantly discriminated against the applicants, who were part of the minority group in the Municipality of Bosanska Krupa based upon their ethnic or national origin and who are now displaced persons desiring to return home.

121. Taking these facts into account, the Chamber orders the respondent Party to pay to the applicants the lump sum amount of 25,000 KM as compensation for non-pecuniary damages suffered by them as a result of the violations of their human rights. The lump sum amount ordered in this paragraph shall be paid to the applicants within 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.

122. By way of clarification, the respondent Party shall pay the lump sum amount specified in the previous paragraph to the applicants in addition to the compensation award determined by the Court of First Instance in Bosanska Krupa in its procedural decision of 13 May 2002. In addition, the respondent Party shall take all necessary action to ensure that the compensation awarded to the applicants in the procedural decision of 13 May 2002 is paid to the applicants within 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.

123. The Chamber also orders the respondent Party to take all necessary action to ensure, as soon as practicable and at the latest within 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, that the applicants are reinstated into full possession of all their remaining real property situated in the Municipality of Bosanska Krupa, excluding the real property which was seized by the Municipal Council in its procedural decision of 25 August 1997 and which is the subject of the previous paragraph. Therefore, the respondent Party shall, to the fullest extent under the law, allow the applicants to return home to the Municipality of Bosanska Krupa, with no further interference with their human rights and no further discrimination against them.

124. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicants in paragraph 121 above. Interest shall be paid as of 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 on the sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

125. For the above reasons, the Chamber decides:

1. unanimously, that the application is admissible against the Federation of Bosnia and Herzegovina in its entirety;

2. unanimously, that, with respect to the real property seized and re-allocated by the Municipal Council of the Municipality of Bosanksa Krupa in the procedural decisions of 25 August 1997, the Federation of Bosnia and Herzegovina has violated the right of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

3. unanimously, that it is unnecessary for the Chamber separately to examine the case under Article 8 of the Convention;

4. unanimously, that the Federation of Bosnia and Herzegovina has violated the right of the applicants to access to a court as guaranteed by paragraph 1 of Article 6 of the Convention;

5. unanimously, that the Federation of Bosnia and Herzegovina has discriminated against the applicants in the enjoyment of their rights protected by Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article 1 of the Agreement;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicants 25,000 KM, by way of compensation for non-pecuniary damages, within 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;

7. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary action to ensure that the compensation award determined by the Court of First Instance in Bosanska Krupa in its procedural decision of 13 May 2002 is paid to the applicants within 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;

8. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary action to ensure, as soon as practicable and at the latest within 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, that the applicants are reinstated into full possession of all their remaining real property situated in the Municipality of Bosanska Krupa, excluding the seized real property which is the subject of the previous conclusion; thereby allowing the applicants, to the fullest extent under the law, to return home to the Municipality of Bosanska Krupa, with no further interference with their human rights and no further discrimination against them;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of 10% (ten per cent) on the sum specified in conclusion no. 6 above or any unpaid portion thereof after the expiry of 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 until the date of settlement in full; and

10. unanimously, to dismiss the remaining claims for compensation;

11. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber on the steps taken by it to comply with these orders within two months from the date on

which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel