



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 October 2002)

Case no. CH/99/2028

Nenad CRNOGORČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 October 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 applicant's father concluded a purchase contract in 1992 with the Yugoslav National Army ("JNA") for an apartment at Grbavička 66 in Sarajevo. The applicant (and his brother) inherited the apartment after the death of their parents. Neither the applicant nor his father obtained registration as the owners of the apartment with the court register. Shortly after the applicant's mother's death in 1998, military housing authorities initiated eviction proceedings against the applicant. The applicant alleges that these eviction proceedings and the refusal of the military authorities to issue the order necessary for the applicant's registration as the owner of the apartment violate his right to peaceful enjoyment of property, protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 8 April 1999 and registered on the same day. The applicant requested the Chamber to order the respondent Party, as a provisional measure, not to evict him from the apartment which he occupied while the proceedings before the Chamber were in progress.

3. On 12 April 1999, the Chamber issued an order for a provisional measure ordering the respondent Party to take all necessary steps to prevent the eviction of the applicant until the final decision of the Chamber.

4. The application was transmitted to the respondent Party for its observations on 13 April 1999. The respondent Party submitted written observations on 13 May 1999. The applicant submitted his written observations on 11 August 2000.

5. The Chamber deliberated on the admissibility and merits of the application on 12 April 1999, 9 November 2001, 2 and 7 September and 7 October 2002, and it adopted the present decision on the latter date.

III. FACTS

6. The applicant is Nenad Crnogorčević from Sarajevo. He states in his application that his father was the occupancy right holder over the apartment in Sarajevo, ulica Lenjinova 66, apt. no. 4 (now Grbavička 66). On 18 March 1992, the applicant's father, as a JNA retiree, concluded a purchase contract for the apartment with the Federal Secretariat for National Defence – Military Board for Civil Engineering of the former Socialist Federal Republic of Yugoslavia. Under the contract, the purchase price that the applicant's father was obliged to pay was 0.00 dinars. As the armed conflict commenced, he did not register ownership of the apartment.

7. The applicant's father died on 7 March 1993, and the applicant's mother continued occupying the apartment until her death in 1998.

8. On 7 September 1998, the applicant concluded a contract on purchase of his own apartment from the Federal Ministry of Defence, located at Grbavička/I 66, apartment no. 3.

9. The applicant initiated proceedings before the Municipal Court II in Sarajevo for the establishment of inheritance. On 2 April 1999, the Municipal Court issued a procedural decision on inheritance, stating that the inheritance of the late Miodrag Crnogorčević consisted of rights and obligations under the real estate purchase contract that was executed on 18 March 1992. Nenad Crnogorčević and Dragan Crnogorčević were declared the legal inheritors of these rights and obligations. Both the procedural decision and the purchase contract refer to the apartment as located at ulica Grbavička (or Lenjinova) no. 66, apartment no. 4.

10. On 31 March 1999, military authorities informed the applicant that he had to vacate the apartment and return the keys and that otherwise the apartment would be sealed on 12 April 1999.

11. On 10 March 2000, the applicant applied to the Federal Ministry of Defence, Department Novo Sarajevo, requesting that it issue an order for registration of ownership over the apartment in question to Miodrag Crnogorčević, the applicant's father. Receiving no response in 4 months, the applicant sent a letter on 14 July 2000 to the Federal Ministry of Defence, Attorney's Office, requesting that it intervene in the case. In the letter the applicant also informed the Federal Ministry of Defence that he intended to initiate court proceedings in accordance with Article 39(d) of the Law on the Sale of Apartments with an Occupancy Right. On 4 August 2000, the Federal Ministry of Defence, Attorney's Office, informed the applicant that he had not met the requirements of Article 39(a) of the Law on the Sale of Apartments with an Occupancy Right and that the Ministry could not issue an order for registration of ownership over the apartment in question.

IV. RELEVANT DOMESTIC LAW

A. Relevant Legislation of the Socialist Federal Republic of Yugoslavia

12. The applicant's father entered into a contract to purchase his apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia –hereinafter “OG SFRY”–no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the JNA.

13. Article 20 of the Law provided that the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase the apartment on the basis of a contract made with the authority responsible for the apartment. Article 21 laid out a method for calculating the price payable for apartments so purchased. The price was based on a valuation of the apartment, subject to a number of deductions. In particular, provisions were made for a deduction in the purchase price based on the amount of contributions made by a particular purchaser to the JNA Housing Fund. Article 23 of the Law placed an obligation on the purchaser of an apartment to submit, within 30 days of the conclusion of the purchase contract, a request to the Land Registry to register the ownership of the apartment. This Law was never recognised as part of the law of Bosnia and Herzegovina.

14. Article 33 of the Law on Basic Ownership Relations provided that the ownership over immovable property was acquired when the ownership was registered in a registry book (OG SFRY nos. 6/80 and 36/90). This Law was in force in the Federation of Bosnia and Herzegovina until 17 March 1998.

B. Relevant Legislation of the Socialist Republic of Bosnia and Herzegovina, and after 11 April 1992, following independence, the Republic of Bosnia and Herzegovina

15. On 15 February 1992, the Government of the Socialist Republic of Bosnia and Herzegovina issued a Decree imposing a temporary prohibition on the sale of apartments previously characterised as social property (Official Gazette of the Socialist Republic of Bosnia and Herzegovina–hereinafter “OG SRBiH”–no. 4/92). Article 1 of this Decree temporarily prohibited the sale of socially owned apartments located in the territory of the Republic of Bosnia and Herzegovina to holders of occupancy rights in them, where sales were being concluded in accordance with the Law on Securing Housing for the JNA. Article 3 of the Decree declared invalid any purchase contract or other contract relating to a property right in such an apartment where that contract was inconsistent with the provisions of the Decree. Article 4 of the Decree prohibited courts and other state organs from notarising such contracts and from registering them either in property registers or in court registers. Article 5 of the Decree provided that the temporary prohibition on sales should remain in force until the entry into force of a law regulating, *inter alia*, the sale of apartments within the JNA's control, and at the latest for one year following the date of issuance of the Decree (15 February 1993).

16. On 11 April 1992 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law according to which the Law on Securing Housing for the JNA should not be applied in the territory of Bosnia and Herzegovina.

17. On 15 June 1992, the Presidency issued a Decree which provided that all property belonging to the JNA and other state organs of the Socialist Federal Republic of Yugoslavia located on the territory of Bosnia and Herzegovina should be considered as belonging to the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina –hereinafter “OG R BiH”–no. 6/92). This Decree thereby established that the Republic of Bosnia and Herzegovina was the *de jure* owner of apartments that had previously been used by the Socialist Federal Republic of Yugoslavia.

18. On 13 March 1993, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with the force of law on the Resources and Financing of the Army of the Republic of Bosnia and Herzegovina, which provided that the social resources of the former Socialist Federal Republic of Yugoslavia which had been used by the JNA were placed under the temporary use and management of the Army of the Republic (OG R BiH nos. 6/93 and 17/93).

19. On 1 June 1994, the Assembly of the Republic of Bosnia and Herzegovina adopted all previously issued Decrees with legal force as Law (OG R BiH no. 13/94). Thus, all Decrees with legal force listed above were adopted as laws on this date.

20. On 12 July 1994, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on Real Property Transactions (OG R BiH no. 18/94). Article 1 provided that contracts relating to real property transactions must be in writing and that the signatures of the contracting parties must be verified by a competent court. It further provided that any contract, relating to property transactions, that had been concluded in a manner that did not conform to the provisions of paragraph 1 of this Article shall have no legal force or effect. Article 3 of the Decree provided that written contracts concluded prior to the entry into force of the Decree were valid if the parties had fulfilled all obligations arising from the contracts completely or substantially. It further provided that contracts concluded prior to the entry into force of the Decree would be considered valid, provided the parties had their signatures certified by a competent court within six months of the entry into force of the Decree.

21. On 7 November 1994, the Assembly of the Republic of Bosnia and Herzegovina introduced a Law on the Transformation of Social Property (OG R BiH no. 33/94). The effect of this Law was to transform all property that had formerly been categorised as socially owned property into state property. This Law entered into force on 25 November 1994 and was applied as of 1 January 1995.

22. On 3 February 1995, the Presidency of the Republic issued a Decree with force of law amending the Law on the Resources and Financing of the Army (OG R BiH no. 5/95) (see paragraph 18 above). This Decree provided that, for the protection of the housing fund of the army, until the issuing of the Law on Housing in the Republic, courts and other state authorities should adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree came into force on 10 February 1995, the date of its publication in the Official Gazette.

23. On 22 December 1995, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law on the Amendments to the Law on the Transfer of Resources of the Socialist Federal Republic of Yugoslavia into the property of the Republic. This Decree provided that contracts for the sale of apartments and other property concluded on the basis of, *inter alia*, the Law on Securing Housing for the JNA were invalid. This Decree also provided that questions connected with the purchase of real estate, which was the subject of annulled contracts, would be resolved under a law to be adopted in the future. This Decree came into force on 22 December 1995. It was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 26 January 1996 (OG R BiH no. 2/96).

C. Relevant Legislation of the Federation of Bosnia and Herzegovina

24. Article 7 paragraph 3 of the Law on the Sale of Apartments with an Occupancy Right of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina—hereinafter “OG FBiH”—nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01 and 61/01) provides:

“If the seller does not conclude the contract upon the request of the holder of an occupancy right who wants to purchase the apartment within the deadline referred to in paragraph 2 of this Article, then the buyer shall have the right to initiate judicial proceedings.”

25. Article 10 of the Law on the Sale of Apartments with an Occupancy Right of the Federation of Bosnia and Herzegovina provides:

“Under conditions prescribed by this Law, the occupancy right holder, his/her spouse or a member of his/her close family household may purchase only one apartment.

“Any contract concluded in violation of provision referred to in paragraph 1 of this Article shall be null and void.”

26. Article 39 of the Law on the Sale of Apartments with an Occupancy Right of the Federation of Bosnia and Herzegovina provides:

“When concluding a contract on the sale of apartments under provisions of this Law, an occupancy right holder, who concluded a contract on the purchase of the apartment on the basis of the Law on Securing in JNA and the Law on Amendments to the Law on Rights and Obligations of the Federal Bodies Regarding Socially Owned Assets Used by Them (Official Gazette of the SFRY, No. 84/90), shall be recognised for the amount paid, calculated in DEM at the exchange rate valid on the day of the payment.”

27. Article 39a of the Law on the Sale of Apartments with an Occupancy Right of the Federation of Bosnia and Herzegovina provides:

“If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, then the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the responsible court.”

28. Article 39b of the Law on the Sale of Apartments with an Occupancy Right of the Federation of Bosnia and Herzegovina provides, in relevant part:

“In the event that the occupancy right holder referred to in Article 39a of this Law did not effect the payment of the total amount of the sale price of the apartment in accordance with the contract on purchase, s/he shall pay the remainder of the amount specified in the contract to the Federation Ministry of Defence....”

29. Article 39c of the Law on the Sale of Apartments with an Occupancy Right of the Federation of Bosnia and Herzegovina provides:

“The provisions of Articles 39a and 39b shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on the Cessation of the Application of the Law on Abandoned Apartments (“Official Gazette of the FBiH”, No. 11/98 and 18/99)”

30. Relevant to the current case, Article 19 of the Law on Housing Relations (OG SRBiH nos. 14/84, 12/87 and 36/89; OG RBiH no. 2/93; OG FBiH nos. 11/98 and 38/98) provides that only one person may be the occupancy right holder over one apartment. If the contract on use of the

apartment is concluded by one of the spouses who lives in the household, then the other spouse shall also be considered the occupancy right holder.

31. Under Article 216 paragraph 1 of the Law on Administrative Proceedings (OG FBiH no. 2/98), the competent administrative organ has to issue a decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against “silence of the administration”).

V. COMPLAINT

32. The applicant alleges that the eviction proceedings and the refusal of the military authorities to issue the order necessary for his registration as the owner of the apartment in question violate his right to peaceful enjoyment of property, protected by Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

33. The respondent Party points to several domestic remedies available to the applicant, such as initiating proceedings for purchase of the apartment pursuant to Article 7(3) of the Law on the Sale of Apartments with an Occupancy Right or civil proceedings to assert the validity of the purchase contract. Considering that the applicant failed to exhaust these domestic remedies, the respondent Party argues that the application is inadmissible.

34. Furthermore, the respondent Party argues that the date of the “final decision” for the purposes of the six-month rule in Article VIII(2)(a) of the Agreement was 26 January 1996, the date of entry into force in the Republic of Bosnia and Herzegovina of the Decree with Force of Law on the Amendment to the Law on Transfer of Resources of the former SFRY. Since the application was lodged more than six months after that date, the Federation claims that the application is inadmissible under the six-month rule.

35. The respondent Party also challenges the facts presented in the application. First, it alleges that the disputed apartment was not properly purchased, because the contract price due during the war was not paid. Further, the respondent Party notes that on 23 April 1999, the applicant concluded a purchase contract for his own apartment, located at Grbavička 66/1 no. 3. Consequently, the respondent Party argues that as an occupancy right holder over another apartment (located at no.3), the applicant could not legally become the possessor of the disputed apartment.

36. As to the merits, the respondent Party maintains that no violation of Article 1 of Protocol No. 1 has occurred. First, the respondent Party claims that possessions within the meaning of the Article are limited to the applicant's own apartment, so the interference with his father's apartment could not amount to a violation of the Convention. The respondent Party then claims that the procedural decision of 2 April 1999 of the Municipal Court II of Sarajevo “only recognised rights and liabilities from the purchase contract concluded on 18 March 1992,” but did not make the applicant the owner or the occupant of the apartment.

37. The respondent Party next argues that the applicant's father had no rights to possession over the apartment pursuant to the Decree on Temporary Ban on Selling Socially Owned Apartments that was effective between 15 February 1992 and 15 February 1993. The Federation claims that the constitutionality of the Decree is outside the Chamber's competence *ratione temporis*; therefore, the Chamber must accept that the applicant had no rights to possession over the apartment. Consequently, there has been no violation of Article 1 of Protocol No. 1.

38. Finally, the respondent Party alleges that the purchase contract concluded by the applicant's father was invalid because it illegally took account of his contributions to the housing fund, such that the purchase price that the applicant's father was obliged to pay was 0.00 dinars. The respondent

Party claims that the policy of counting housing contributions towards the purchase price of apartments unfairly privileged citizens with occupancy rights over the former JNA apartments.

B. The applicant

39. The applicant first argues that he has standing as an applicant before the Chamber since his inheritance rights were established by the procedural decision of the Municipal Court II of Sarajevo of 2 April 1999.

40. The applicant then argues that the domestic remedies identified by the respondent Party are ineffective. Namely, the applicant is not obligated to initiate purchase proceedings, since he is claiming the purchase rights of his father as an inheritor. The only effective remedy available to the applicant was initiating probate proceedings to determine his rights and obligations as an inheritor. The applicant exhausted this remedy by obtaining the procedural decision of the Municipal Court II of Sarajevo of 2 April 1999.

41. As to the six-month rule, the applicant argues that until 1998, when his mother died, he had no rights to pursue and he had no standing to sue until his rights to possession as an inheritor were recognised by the procedural decision of the Municipal Court II of Sarajevo of 2 April 1999. The applicant thus claims that the date relevant for the purposes of the six-month rule is 2 April 1999. Since the application was lodged only six days later, the applicant claims that the six-month requirement has been satisfied.

42. The applicant states that the Law on the Sale of Apartments with an Occupancy Right (OG FBiH no. 27/97) and the Instruction for Implementation of the Provisions of Articles 39(a), (b), and (c) provide that, after the death of an occupancy right holder who had purchased a military apartment before 6 April 1992, the inheritors have the right to submit a claim for registration of ownership rights. The applicant thus alleges that the Federal Ministry of Defence improperly and without grounds rejected his claim for registration of ownership rights pursuant to the Instruction.

43. The applicant also argues that his father's purchase contract is valid, contrary to the respondent Party's assertion. The reported purchase price of 0.00 dinars only reflects the fact that the buyer's housing contributions were higher than the actual purchase price. At the moment of the purchase, the buyer was in possession of the apartment as an occupancy right holder, so the purchase contract was both valid and properly executed by signatures.

44. Finally, the applicant argues that the right to inherit property rights is a possession protected by Article 1 of Protocol No. 1 to the Convention. Since the applicant's father had a right to register ownership of the apartment, the applicant inherited that right and is entitled to exercise it.

VII. OPINION OF THE CHAMBER

A. Admissibility

45. Before considering the merits of this case, the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider "whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken."

1. Exhaustion of remedies

46. In the present case the Federation objects to the admissibility of the application on the grounds that the applicant should have initiated proceedings pursuant to Article 7(3) of the Law on the Sale of Apartments with an Occupancy Right and other available domestic remedies. However, the applicant does not intend to purchase the apartment, he merely wishes to assert his rights as an inheritor and to register ownership rights over the apartment in question. The applicant availed himself of domestic remedies to confirm his rights as one of the inheritors (as established in the

procedural decision of 2 April 1999 of the Municipal Court in Sarajevo) and to request from the Federal Ministry of Defence an order to register his ownership rights over the apartment in question. In accordance with Article 39a of the Law on the Sale of Apartments with an Occupancy Right, such an order is a pre-condition for the registration of ownership. The domestic remedies suggested by the respondent Party would not advance the applicant's cause any further and thus are irrelevant. Consequently, the Chamber considers all available and effective remedies exhausted.

2. Six-month rule

47. In its observations the respondent Party argues that the "final decision" for the purposes of the six-month rule and Article VIII(2)(a) of the Agreement took place on 26 January 1996, the date of the entry into force in the Republic of Bosnia and Herzegovina of the Decree with Force of Law on the Amendments to the Law on Transfer of Resources of the former SFRY.

48. As the applicant observed, in 1996 his mother, who was then still alive, occupied the apartment. The applicant had no rights to pursue until after his mother died in 1998, and he established his rights as an inheritor on 2 April 1999. The military authorities requested the applicant to vacate the apartment on 31 March 1999. The application was filed on 8 April 1999, less than ten days after the request to vacate was received. In addition, since the applicant is still unable to register ownership of the apartment, the Chamber considers the respondent Party's actions to be an ongoing interference. Consequently, the Chamber considers that the six-month requirement of Article VIII(2)(a) of the Agreement is satisfied.

B. Merits

49. Under Article XI of the Agreement, the Chamber must next address the question whether the facts established above indicate a breach by the respondent Party of its obligations under the Agreement. In terms of Article I 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 European Convention on Human Rights.

50. Article 1 of Protocol No. 1 to the Convention provides:

"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 payment of taxes or other contributions or penalties."

1. Existence of a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention

51. The Chamber notes that, according to the 2 April 1999 procedural decision on inheritance of the Municipal Court in Sarajevo, the applicant is one of two legal inheritors of all the rights and obligations under the purchase contract for the apartment concluded by his father on 18 March 1992. Therefore, the rights to possession at issue in this case initially belonged to the applicant's father, and thereafter were inherited by the applicant.

52. The Chamber notes that on 18 March 1992, the applicant's father concluded a purchase contract for the apartment with the former SFRY Federal Secretariat for National Defence – Military Board for Civil Engineering and he fulfilled his contractual obligations; therefore, he became entitled to ownership of the apartment. Were he still alive, the applicant's father could apply to the Federal Ministry of Defence to register his ownership rights to the apartment in question, pursuant to Article 39a of the Law on the Sale of Apartments with an Occupancy Right.

53. The Chamber next considers whether a right to register ownership of an apartment is a possession for the purposes of Article 1 of Protocol No. 1 to the Convention. The Chamber notes that registration of ownership merely confirms the applicant's legal rights over the apartment that has already been recognised as his inheritance. Such registration amounts to a valuable economic benefit and a recognition of an existing right.

54. The respondent Party objects to the validity of the purchase contract because it was concluded on 18 March 1992, after 15 February 1992, the date upon which the Government of the Socialist Republic of Bosnia and Herzegovina issued the Decree imposing a temporary ban on the sale of previously socially-owned apartments (see paragraph 15 above). According to the respondent Party, Article 3 of the Decree declared invalid, in advance, any contract concluded during the time period of the temporary ban. As a result, the respondent Party contends that the contract signed by the applicant's father "could not produce any legal effect" and could not lead to his acquisition of any right to ownership of the apartment in question. Furthermore, the respondent Party submits that the question of the constitutionality of the Decree is outside the competence of the Chamber.

55. The Chamber recalls that the respondent Party has advanced these arguments in similar cases in the past and the Chamber has rejected them. The Chamber has consistently found the invalidity of a contract to purchase an apartment concluded with the JNA not established (e.g., cases nos. 96/3, 96/8, and 96/9 *Medan, Bastijanović, and Marković*, decision on the merits of 3 November 1997, paragraph 33, Decisions on Admissibility and Merits March 1996-December 1997; cases nos. CH/96/2 *et al., Podvorac and Others*, decision on admissibility and merits of 14 May 1998, paragraph 60, Decisions and Reports 1998). Accordingly, the Chamber has also consistently found that the rights realised under such a contract to purchase an apartment concluded with the JNA constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention (see, e.g., cases nos. 96/3, 96/8, and 96/9 *Medan, Bastijanović, and Marković*, decision on the merits of 3 November 1997, paragraphs 32-34, Decisions on Admissibility and Merits March 1996-December 1997). The Chamber notes that in the present case the applicant's father has concluded such a contract under factual circumstances similar to those in the cases cited, and therefore, it sees no reason to differ from its previous jurisprudence.

56. Moreover, the Chamber takes particular notice of Article 39a of the Law on the Sale of Apartments with an Occupancy Right, which provides that the "Federal Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment" if the occupancy right holder "uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992" (see paragraph 27 above). Article 39a is one of the central provisions for the recognition of privatisation of JNA apartments in the Federation. Notwithstanding the earlier temporary ban on the sale of apartments of 15 February 1992 (see paragraph 15 above), Article 39a implicitly recognises the validity of all purchase contracts concluded before 6 April 1992, such as the contract at issue in this case. Had Article 39a intended only to recognise the validity of purchase contracts concluded before 15 February 1992, it could have said so, but it does not. Therefore, Article 39a offers additional support for the recognition of the contract on purchase at issue in this case, which was concluded on 18 March 1992.

57. The Chamber is aware that the respondent Party further objects to the validity of the purchase contract in question because the purchase price appearing on the contract was 0.00 dinars. The applicant states that this arrangement merely reflected that the contributions made by the applicant's father to the housing fund exceeded the actual price of his apartment. As this reply remained unchallenged by the respondent Party, the Chamber accepts this explanation.

58. Accordingly, the Chamber considers the rights of the applicant's father under his contract of purchase for the apartment in question constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. Pursuant to the procedural decision on inheritance of the Municipal Court in Sarajevo of 2 April 1999, the applicant inherited all rights and obligations under the purchase contract. One such right is to be registered as the owner of the apartment with the relevant authorities, which, as described above, the applicant has been unable to do.

2. Interference with the applicant's peaceful enjoyment of his possessions and justification therefor

59. The Chamber next examines whether the respondent Party interfered with the applicant's peaceful enjoyment of his possessions. The Chamber considers that the failure of the authorities to allow the applicant to register ownership of the apartment constitutes an interference with his right to peaceful enjoyment of his possessions. This interference is ongoing as the applicant is still unable to register as the owner of the apartment. In addition, the eviction proceedings against the applicant also constitute an interference with the peaceful enjoyment of property.

60. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to the conditions provided by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

61. The Chamber notes that Article 39a of the Law on the Sale of Apartments with an Occupancy Right prescribes that the Federal Ministry of Defence must issue an order allowing the applicant to register as the owner if an occupancy right holder concluded a contract subject to certain conditions:

"If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the responsible court."

62. In the present case, the conditions of Article 39a were fulfilled by the applicant's father. As the inheritor of his father's rights and obligations under the purchase contract, the applicant attempted to exercise his right to register his ownership by applying to the Federal Ministry of Defence on 10 March 2000. The Federal Ministry of Defence, however, replied that the applicant had not met the requirements of Article 39a of the Law on the Sale of Apartments with an Occupancy Right and refused to allow the applicant register ownership. Noting that the applicant had already purchased one apartment, the Ministry reasoned that in accordance with Article 10 of the Law on the Sale of Apartments with an Occupancy Right, "the occupancy right holder, his/her spouse or a member of the family household may purchase only one apartment"; therefore, the applicant could not acquire the ownership right to a second apartment. However, the applicant did not seek to purchase a second apartment, but rather, merely to register ownership rights to the apartment he inherited from his father. Therefore, the Ministry's decision refusing to allow him to do so was not subject to the conditions provided by law.

63. Since the respondent Party interfered with the applicant's "possession" contrary to the conditions provided by law, the Chamber does not need to consider whether these actions were in accordance with the public interest. Therefore, the Chamber concludes that the respondent Party violated the applicant's right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

VIII. REMEDIES

64. Under Article XI paragraph 1(b) of the Agreement, the Chamber must also address the question what steps shall be taken by the respondent Party to remedy the breaches of the Agreement which it has found.

65. The violation of Article 1 of Protocol No. 1 in this case is two-fold. First, the respondent Party interfered with the applicant's right to peaceful enjoyment of possessions by initiating eviction proceedings against him. The second interference is the failure of the respondent Party to allow the applicant to register ownership rights to the apartment. To redress these violations the Chamber will order that the respondent Party take all necessary steps to prevent the eviction of the applicant and

to allow the applicant to register as the owner of the disputed apartment. The applicant did not request any monetary compensation, and the Chamber finds no reason to award any.

IX. CONCLUSIONS

66. For these reasons, the Chamber decides:

1. Unanimously, to declare the application admissible;
2. unanimously, that the eviction proceedings initiated against the applicant constitute a violation of his right to peaceful enjoyment of his 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 the refusal to register the applicant as the owner of the apartment constitutes a violation of his right to peaceful enjoyment of his 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;
4. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to terminate the eviction proceedings against the applicant swiftly, and in any event, not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;
5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to register the applicant as the owner of his apartment swiftly, and in any event, not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;
6. unanimously, that the order for provisional measures issued on 12 April 1999 will remain in force until the applicant is registered in the land books as the owner of the apartment; and
7. unanimously, to order the Federation of Bosnia and Herzegovina to report to it not later than three months after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel