DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 October 2003)

Case no. CH/02/8953

Muhamed HALILOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 October 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 ("the General Framework Agreement");

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin from Brčko. The case concerns the seizure of several plots of city construction land by the Municipality of Brčko and their subsequent re-allocation to an individual for private construction purposes. A part of the land that was re-allocated belonged to the applicant. At the time the land was seized, the applicant was a displaced person and, as he was absent, he did not take part in the proceedings on seizure. Although the Municipality of Brčko has decided on compensation, the applicant never received anything. Efforts made by the applicant trying to challenge the seizure of the land before domestic institutions and to regain possession of it were not successful.

2. The application raises issues under Article 6 (right to access to a court) 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.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 19 February 2002 and registered on the same day. On 16 October 2002, the case was transmitted to Bosnia and Herzegovina and the Republika Srpska as respondent Parties. Bosnia and Herzegovina did not send any observations. The Republika Srpska submitted its observations on admissibility and merits of the case on 17 December 2002, 25 August and 2 September 2003. The applicant, in reply, sent submissions on 13 January, on 17 April, on 28 July and 2 September 2003.

4. The Vice-President of the First Panel of the Chamber, Mr. Miodrag Pajić, was the Speaker of the Municipal Assembly in Brčko at the time this body took decisions relevant to the present application (see paragraphs 9 and 10 below). Therefore, Mr. Pajić withdrew from all deliberations the Chamber held in this case.

5. The Chamber deliberated on the admissibility and merits of the case on 11 October 2002, on 2 April, 5 September and 7 October 2003. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

6. The applicant's father, Sejfo Halilović, was the owner of real estate located at Ulica Alekse Šantića no. 12 in the Municipality of Brčko, registered under cadastral lots nos. 972/143 and 972/145, covering a total surface of 260 m^2. On 25 December 1981, Sejfo Halilović disposed of this land in favour of the applicant as a donation ("the applicant's land"). On 31 March 1982, the Municipal Court in Brčko allowed that the priority right to use the land be registered under the applicant's name in the land books. On 2 July 1982, the applicant obtained a building permit to construct a family house on the site, which he did thereafter.

7. During the armed conflict in Bosnia and Herzegovina, Brčko fell under Serb control and the applicant left his house at Ulica Alekse Šantića no. 12. Annex 2, Article V, to the General Framework Agreement established that, pending a binding arbitration, and unless otherwise agreed, the area of Brčko should continue to be administered as it was administered at the time of the signing of the General Framework Agreement on 14 December 1995. At that time, the north-eastern part of the Brčko Municipality was administered by the Republika Srpska, while the southern part was administered by the Federation. It was only on 8 March 2000 that the Statute of the Brčko District of Bosnia and Herzegovina entered into force, unifying both parts of the Brčko Municipality and placing them under the sovereignty of Bosnia and Herzegovina.

8. The applicant asserts that on or around 20 May 1997, his land and the surrounding plots were surveyed in order to prepare a subsequent re-cut of plot sizes. On 26 June 1997, the Municipal Assembly of Brčko held its 34th session, during which it adopted a decision "on the seizure of undeveloped building land" for the purpose of carrying out construction work. The decision referred to parts of plots used by several individuals, all of them of Bosniak origin who had fled from their

homes. Of the applicant's land, an area of 24 square metres (2 m^2 from cadastral lot no. 972/145 and 22 m^2 from cadastral lot no. 972/143) was cut off and joined with other plots. The remainder of the plots belonging to the applicant were given new lot numbers (nos. 972/154 and 972/156, meanwhile changed to nos. 987/4 and 960/5). The seized land was allocated to the Municipality of Brčko, and the Court of First Instance in Brčko was instructed to enter the changes into the land books. The decision stipulated that the issue of compensation for "developed building land" should be decided upon in separate proceedings. No appeal was permitted against the decision of 26 June 1997, however, an administrative dispute before the Higher Court in Bijeljina could be instituted within 30 days upon receipt of the decision. It is not known on what date the applicant actually received this decision. According to a hand-written note on the decision, it became final and binding as of 27 October 1997.

9. At the time when these proceedings were conducted, the applicant lived as a displaced person in the village of Rahić in the southern part of the Brčko Municipality that was administered by the Federation of Bosnia and Herzegovina. The Municipal Assembly of Brčko appointed Slobodan Zeljić, a lawyer from Brčko, to act as the representative of all persons from whom land was taken and to protect their interests. The Municipality of Brčko made no attempt to contact the applicant prior to taking the decision of 26 June 1997 because the Municipality was apparently not aware of the applicant's address, which is also the reason why it appointed the representative.

10. On 24 September 1997, the Municipal Assembly of Brčko re-allocated the previously seized land to the applicant's neighbour, Mr. Siniša Kisić, for the purpose of constructing a private residential building on the site. It is noteworthy that on 8 March 2000, Mr. Kisić became the Mayor of the District of Brčko, and that at the time these proceedings were conducted, he worked in the Municipal Administration of the Municipality of Brčko. As regards compensation, the decision stipulated that all former users of the seized land should be compensated collectively in the amount of 8,794.50 Yugoslav Dinars, which at the time corresponded to approximately 2200 German Marks. Again, no administrative appeal was allowed against this decision, but an administrative dispute could be initiated. On 5 December 1997, the Court of First Instance in Brčko decided that Siniša Kisić's acquired title be entered in the land books.

11. Due to the poor state of his house, the applicant could not return to live in it until early 2002. According to him, he was never delivered the decisions of 26 June and of 24 September 1997, but he discovered that his neighbour Siniša Kisić had erected a concrete wall fencing off a part of the applicant's land when he once visited his house. On 1 October 2002, Siniša Kisić received a building permit for a garage bordering the applicant's site of land, and construction work started in December 2002.

12. The applicant decided not to accept the turn of events and wrote various complaints, *inter alia*, to the Republika Srpska Ministry for Refugees and Displaced Persons, to the Office of the High Representative in Brčko and to the Government of the District of Brčko. On 5 September 2001, the Administrative Inspection of the District of Brčko (*Upravna inspekcija Brčko Distrikta*, "the Inspection") informed the applicant that the seizure of the land in question and also the administrative proceedings were carried out in accordance with law. Moreover, the Inspection saw no reason why the decision of the Municipal Assembly of 26 June 1997 should be annulled. It reasoned that the case was not within the scope of the Law on Cessation of Application of the Law on Use of Abandoned Property.

13. On 20 September 2001, the applicant addressed a petition to the Government of the District of Brčko, Department for Administrative and Professional Services (*Vlada Brčkog Distrikta, Odjel za stručne i administrativne poslove*) ("the Administration"). On 3 October 2001, the Administration replied, stating that the seizure of the applicant's land served the purpose to implement the urban plan and that therefore, the applicant's consent to the seizure was not required.

14. On 2 May 2002, the applicant lodged an appeal against the "silence of administration" of the Government of Brčko, Department for Urbanism, Property Affairs and Economic Development (*Vlada Brčko Distrikta, Odjel za urbanizam, imovinske odnose I privredni razvoj*) with the Appellate Commission of the District of Brčko. On 1 July 2002, the Appellate Commission declared itself incompetent to deal with the applicant's appeal. It stated that the decision of the Municipal Assembly

of Brčko of 26 June 1997 was final and binding and could only have been appealed against in an administrative dispute.

15. Thereafter, the applicant initiated an administrative dispute against the decision of 1 July 2002, and on 29 January 2003, the Basic Court of the District of Brčko ordered the Appellate Commission to reconsider the applicant's appeal. On 14 April 2003, the Appellate Court of the District of Brčko *ex officio* quashed the decisions of the Municipal Assembly of Brčko of 26 June 1997 and of 24 September 1997, at the same time ordering the first instance administrative body to renew proceedings concerning the seizure of the applicant's land. There is no final decision in that respect to date.

16. The applicant never received compensation for the land taken from him.

IV. RELEVANT LEGISLATION

A. The Law on Building Land

17. The Law on Building Land (Official Gazette of the Socialist Republic of Bosnia and Herzegovina — hereinafter "OG SRBiH" – nos. 34/86, 1/90 and 29/90) was applied in the former Socialist Republic of Bosnia and Herzegovina and thereafter, subject to changes and amendments, in the Republika Srpska (Official Gazette of the Republika Srpska — hereinafter "OG RS" — nos. 29/94, 23/98 and 5/99). It 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" and "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 and 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).

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

> "(1) The former owner of urban building land is entitled to the following rights:
> (i) temporary right to use undeveloped urban building land until its seizure (hereinafter: temporary right to use land);
> (ii) priority right to use undeveloped urban building land for the purpose of construction (hereinafter: priority right to construct upon land); …
>
> (2) 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.
>
> (3) 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."

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

> "(1) 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.
>
> (2) 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.

(3) 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."

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

"(1) The Municipal Assembly shall issue a procedural decision on seizure of undeveloped city building land in order to realise its permanent use, *i.e.* to prepare it for construction purposes.

(2) 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.

(3) The previous owner, *i.e.* the holder of a temporary right to use the land, shall be heard in the proceedings with a view to seize the land.

(4) Against the procedural decision to seize the land an appeal cannot be filed, but an administrative dispute may be initiated against it."

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

"(1) 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.

(2) 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.

(3) 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."

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

"(1) 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.

(2) 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."

23. Article 40 deals with the permanent right to use developed building land as follows:

"(1) At the time when developed building land is transferred into social ownership, the owner (…) acquires a permanent right to use the land already used for construction as long as the building continues to exist on the land.
…"

24. Article 44 provides for compensation for seized undeveloped building land as follows:

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

(2) 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.

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

(4) 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)."

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

"(1) 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.

(2) A decision on the allocation of land for building purposes shall be enacted by the Municipal Assembly."

26. Article 52 contains further regulations as to compensation, as follows:

"(1) The person the city construction land is allocated to is obliged to pay compensation for the allocated land as well as all expenses arising from the development of the land.
...
(3) The amount of compensation (...) shall be determined by the procedural decision on allocating the land (...)

(4) A building permit may not be issued and the right to use may not be registered in the land books unless the person to whom the city construction land is allocated proves that he or she paid compensation as well as the expenses arising from the development of the land."

B. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" no. 47/86)

27. The Law on General Administrative Proceedings was taken over as a law of the Republika Srpska. It establishes a detailed regime for the conduct of administrative proceedings.

28. Article 5 states that organs conducting administrative proceedings shall act in such a manner as to enable the parties to the proceedings to realise their rights in the most efficient way possible, having regard both to the public interest and to the interests of others affected. Article 8 sets out the general principle that before making a decision, the deciding organ must give the parties the opportunity to express their opinion on all relevant facts and circumstances.

29. Article 55 paragraph 1 envisages the appointment of a representative in the absence of a citizen 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, then 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, then 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."

C. The Statute of the Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko District no. 1/00)

30. The Statute of the Brčko District of Bosnia and Herzegovina was passed on 7 December 1999 and came into force on 8 March 2000.

31. Article 1 entitled "Fundamental Principles" reads:

"(1) The Brčko District is a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina.
…"

32. Article 5 entitled "Territory of the Brčko District" reads:

"The territory of the District encompasses the complete territory of the Brčko Municipality with the boundaries as of 1 January 1991."

33. Article 71 entitled "Legal Succession" reads:

"…
(2) The Brčko District of Bosnia and Herzegovina is the legal successor to the Republika Srpska Brčko Municipality as well as to the administrative arrangements of Brka and Ravne-Brčko.
…"

34. Article 72 entitled "Judicial and Administrative Proceedings" reads:

"…
(2) All administrative proceedings pending at the time this Statute enters into force shall be referred to the District Government."

D. Decision of the High Representative on the Allocation of Socially Owned Land

35. 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".

36. 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.
…
This Decision does not apply to the District of Brčko."

V. COMPLAINTS

37. The applicant complains of a violation of his right to peaceful enjoyment of his possessions

as protected by Article 1 of Protocol No. 1 to the Convention and seeks to be returned the entire land he was in possession of before it was seized by the Municipality of Brčko in 1997.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

38. Bosnia and Herzegovina did not submit any observations.

B. The Republika Srpska

39. The Republika Srpska does not dispute the factual background of the application. However, it objects to having standing as a respondent Party considering that the Statute of Brčko confers responsibility on Bosnia and Herzegovina only. Moreover, it suggests that the application be declared inadmissible due to non-exhaustion of domestic legal remedies because the applicant has not availed himself of court proceedings regarding compensation. In addition, the Republika Srpska claims that the administrative organs of the District of Brčko are dealing with the applicant's complaints in renewed proceedings. The Republika Srpska denies that any of the applicant's procedural or material rights were violated in the proceedings leading to the seizure of the applicant's land.

40. According to information received on 2 September 2003, the garage erected by Siniša Kisić is not actually built on land previously belonging to the applicant.

C. The applicant

41. In his submissions, the applicant objects to the Republika Srpska's claim that it has no standing as a respondent Party. He points out that at the relevant time, the Republika Srpska was exclusively exercising authority and control of administrative affairs in Brčko. As regards the administrative proceedings conducted in his absence, the applicant expresses dissatisfaction that a lawyer of Serb nationality was appointed to protect his interests. Since the applicant lived as a displaced person in the part of the Brčko Municipality administered by the Federation of Bosnia and Herzegovina, he asserts that he could have easily been contacted, but that the Municipality of Brčko had failed to make any attempts in that direction for obvious reasons. In the applicant's view, it is also abundantly clear that the seizure of the land and its subsequent allocation to the later Mayor of Brčko served exclusively a private, not a public purpose. In support, he claims that Mr. Kisić had already built a house on his land some 20 years ago and that he enlarged his plot of land on the applicant's costs in order to built a garage. The applicant states that he is not interested in any form of compensation, but that he wants to repossess the full extent of his land.

VII. OPINION OF THE CHAMBER

A. Admissibility

42. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. As directed against Bosnia and Herzegovina

43. Bosnia and Herzegovina did not send any observations regarding the present application. The Republika Srpska argues that it cannot be held responsible for any alleged violations of human rights because the District of Brčko is under the exclusive sovereignty of Bosnia and Herzegovina.

44. The Chamber notes that the District of Brčko was formally created on 8 March 2000. The decision of the Municipal Assembly of Brčko to seize the applicant's land and the decision of the same body to allocate the land to Mr. Siniša Kisić date back to 1997. At the relevant time, the Republika Srpska exercised authority over the part of the Brčko Municipality where the applicant's land is located, and organs of the Republika Srpska were conducting all administrative proceedings.

The Chamber therefore concludes that Bosnia and Herzegovina did neither have *de jure* nor *de facto* authority, and thus had no responsibility, for the seizure of the applicant's land and its subsequent re-allocation to Siniša Kisić in 1997 (see also case nos. CH/00/4116 et al., *Spahalić and Others*, Decision on Admissibility and Merits delivered on 7 September 2001, Decisions July-December 2001, paragraph 108). At the time when the applicant approached the institutions of the District of Brčko after he had returned to his house at Ulica Alekse Šantića no. 12 (see paragraphs 11-15 above), the administrative proceedings leading to the seizure of the land were already completed, and the decisions relating thereto had become final and binding.

45. However, Bosnia and Herzegovina is the legal successor of the Republika Srpska on the territory where the applicant's land is located (see above paragraph 33). The Chamber finds, especially as regards the possibility of Bosnia and Herzegovina to remedy the applicant's complaint in the re-opened administrative proceedings, that it cannot be freed of any responsibility. It follows that the application is also admissible as directed against Bosnia and Herzegovina.

2. Requirement to exhaust effective domestic remedies

46. 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 the *Onić* case (case no. CH/97/58, decision on admissibility and merits of 12 February 1999, Decisions January-July 1999, paragraph 38), the Chamber held that it was necessary to take realistic account not only of the existence of formal remedies in the domestic system, but also of the general legal and political context in which they operate. The Republika Srpska argues that the application should be declared inadmissible on the ground that the applicant did not pursue his compensation claim before the domestic administrative organs or courts, and that the administrative organ of first instance of the District of Brčko is dealing with the applicant's complaints in renewed proceedings following a judgment of the Appellate Court of 14 April 2003.

47. The Chamber notes, at the outset, that the applicant has made it clear that he seeks full repossession of the land taken from him by the decision of the Municipal Assembly of Brčko of 26 June 1997, and that he does not wish to be compensated instead.

48. The Chamber furthermore observes that no appeal was allowed against the procedural decision of 26 June 1997 which seized the land of the applicant. The applicant was incapable of initiating an administrative dispute before the Higher Court in Bijeljina because he was unaware of the procedural decision of 26 June 1997, and the Municipality of Brčko made no attempts to locate him. In fact, it remains uncertain if the applicant received the decision at all, and there is no provision that places the burden of proof of whether it was delivered on the applicant. Also, the representative appointed by the Municipality of Brčko for him did not file an administrative dispute. As a result, the decision became legally valid and effective on 27 October 1997 *in absentia* of the applicant.

49. After he became aware that a part of his land had been seized, the applicant lodged objections and appeals with the Administrative Inspection of the District of Brčko, the Department for Administrative and Professional Services and the Department for Urbanism, Property Affairs and Economic Development of the Government of the District of Brčko. It was only the recent decision of the Appellate Court of the District of Brčko of 14 April 2003 that ordered the administrative body of first instance to reopen proceedings on the seizure of the applicant's land, and it is left open what will be the outcome of such renewed proceedings and when a decision reached therein will become final and binding. Furthermore, the Chamber notes that even if the re-opened proceedings will lead to a result favourable for the applicant, he was not able to use the land taken from him for more than six years of time. The Chamber, therefore, finds that all these actions turned out not to be effective for the purposes of the applicant's claim.

50. Against this background, the Chamber finds that the applicant has exhausted available effective domestic remedies, within the meaning of Article VIII(2)(a) of the Agreement.

3. Conclusion as to admissibility

51. No other ground for declaring the case inadmissible has been put forward or is apparent. The

Chamber therefore declares the application admissible in its entirety.

B. Merits

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

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

53. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "(1) 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.
>
> (2) 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."

54. 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 v. The Republika Srpska*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions January-July 1999).

a. Existence of a "possession"

55. 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" (European Court of Human Rights, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 96, paragraph 54).

56. As concerns the case at hand, the Chamber notes that the very land subject to the seizure was not actually covered by a building, but that it is situated on the curtilage of a plot on which the applicant had constructed a house. However, the decision of 26 June 1997 is one of "seizure of undeveloped building land from the previous user". The question arises whether the applicant's rights relating to this land constitute a "possession", irrespective of its legal classification as developed or as undeveloped building land, within the meaning of Article 1 of Protocol No. 1.

57. In its jurisprudence, the Chamber has recognised that where previous structures exist, the right to use developed real property for construction purposes 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, *Kovačević v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 8 January 2002, Decisions January-June 2002 paragraphs 55-60; case no. CH/99/2656, *Islamic Community in Bosnia and Herzegovina v. The Republika Srpska*, decision on admissibility and merits of 5 December 2000, Decisions July-December 2000, paragraph 111).

58. Moreover, the Chamber has held that the character of the priority right to construct upon undeveloped building land and the temporary right to use it, as defined in Article 21 of the Law on Building Land, indicates that it is a valuable and transferable property right closely related to ownership rights. According to Article 28 of the same Law, the priority right to construct upon building land may be transferred and inherited along with the temporary right to use building land. Therefore, the Chamber found, it would be considered to be an enforceable right with an economic value which is a "possession" within the meaning of Article 1 of Protocol No. 1 (see also case no. CH/00/6134, *Štrbac v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 2 September 2002, paragraphs 86 -89).

59. It follows that regardless of the qualification of the seized land as developed or as undeveloped building land, the applicant's rights pertaining to the total surface of land comprised by previous cadastral lots nos. 972/143 and 972/145 constitute a "possession" within the meaning of Article 1 of Protocol No. 1.

b. Interference

60. The Chamber finds that the decision of the Municipal Assembly of Brčko of 26 June 1997 to deprive the applicant of his right to use the land, along with the decision of 24 September 1997 to re-allocate the plots to Siniša Kisić, interfered with the applicant's enjoyment of his possessions. As a result, the applicant's priority right to construct upon and his temporary right to use his land became void because it was annexed to the plot owned by Siniša Kisić. The actions of the Republika Srpska must therefore be considered to constitute a deprivation of the applicant's possessions within the meaning of the second rule of Article 1 of Protocol No. 1.

61. Any deprivation of possessions must always be of public interest and subject to conditions provided for by law. The Chamber will now examine whether these conditions were followed in the case of the applicant.

c. Principle of lawfulness

62. 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.

63. In this context, the Chamber pays particular attention to the fact that the seizure by the Municipal Assembly's decision of 26 June 1997 was carried out on the basis that the applicant's land could be qualified as "undeveloped building land". However, at one point in the decision, it is referred to as "developed building land" (see paragraph 8 above).

64. The Chamber notes that different legal provisions apply to the seizure of developed and undeveloped building land. The latter case is governed by detailed legal provisions, whereas the user of developed building land acquires a permanent right to use that can be stripped away from him only in extraordinary circumstances (see paragraph 23 above). In the instant case, the applicant undisputedly constructed a house on the plot. It appears that for the purposes of the Law on Building Land, cadastral lots nos. 972/143 and 972/145 in their entirety would have to be considered as "developed building land". The Chamber is not aware of any legal provision providing for a different legal classification of a plot's curtilage, nor has the Republika Srpska made an argument to that end. The Chamber finds, rather, that the Municipality of Brčko in its decision of 26 June 1997 interpreted the law in a way that best suited the purpose of depriving the applicant of a part of his land. Therefore, the legal basis of the seizure of the applicant's land must be seriously called into question.

65. Even if the applicant's land met the conditions to be regarded as undeveloped building land, the Municipality of Brčko would have had 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 (see paragraph 22 above). In this case, there was no actual opportunity for the applicant to exercise such right since the Municipality of Brčko seized and

allocated the real property *in absentia* of the applicant, although a temporary representative who was unknown to the applicant was invited to take part in the proceedings.

66. For these reasons, the Chamber concludes that the seizure of the applicant's land, carried out in his absence and on a tenuous legal basis, constitutes an unjustified deprivation of the applicant's right.

d. Public interest

67. In addition, even in case the interference would be considered as lawful, the Chamber notes that the taking of the applicant's land would have to be of public interest. In that respect, the Chamber acknowledges that the Republika Srpska enjoys a quite broad margin of appreciation in assessing what is in the "public interest". In the the case of *Sporrong* and *Lönnroth v. Sweden* (judgment of 23 September 1982, Series A no. 52, para. 69), the European Court of Human Rights ("the European Court") has held that

> "... in an area as complex and difficult as that of the development of large cities, the Contracting States should enjoy a wide margin of appreciation in order to implement their town-planning policy. Nevertheless, the Court cannot fail to exercise its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to "the peaceful enjoyment of (their) possessions", within the meaning of the first sentence of Article 1."

68. In exercising this power of review, in the case of *James v. United Kingdom* (judgment of 21 February 1986, Series A no. 98, para. 40), the European Court found that in principle,

> "... a deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be 'in the public interest'".

69. In the instant case, the Chamber notes that the land of the applicant was first allocated to the Municipality of Brčko and, thereafter, re-allocated to an individual of the majority ethnic group who later became the Mayor of Brčko, and who used it for his own purposes. In the Chamber's view, the transfer of land from a displaced person to a well-established man in the Municipality manifestly lacks justification in the interest and needs of the public. It follows that the seizure of the land was not only unlawful, it was also carried out in disregard of the public interest.

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

70. The Chamber concludes that the applicant's priority right to use the land constitutes a protected possession, within the meaning of Article 1 of Protocol No. 1. In issuing the procedural decisions of 26 June 1997 and of 24 September 1997, which seized and allocated the applicants' real property to Siniša Kisić, the Republika Srpska failed to comply with domestic law. Neither were these acts in the public interest. Accordingly, the Chamber decides that the Republika Srpska has violated the applicant's right as guaranteed by Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

71. Article 6 paragraph 1 of the Convention reads, in relevant part, 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 ...."

72. The Chamber recalls that the applicant did not initiate court proceedings to challenge the decisions of 26 June 1997 and of 24 September 1997 because due to his absence, he did not meet the deadline to initiate an administrative dispute. Taking into consideration its conclusion that the Republika Srpska has violated the applicant's 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 6 of the Convention.

VIII. REMEDIES

73. 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.

74. The applicant requested the Chamber to return to him the full extent of the real property used by him prior to the conflict. He did not submit a claim for compensation to the Chamber.

75. As has been established above, the Republika Srpska is responsible for the seizure of the applicant's land. Due to the shift of authority from the Republika Srpska to the newly-formed District of Brčko of Bosnia and Herzegovina taking place thereafter, today the Republika Srpska is not in a position to return to the applicant the land that was taken from him. In accordance with general principles of legal succession, Bosnia and Herzegovina incurs responsibility for remedy human rights violations committed by its legal predecessor, the Republika Srpska, that are now within Bosnia and Herzegovina's exclusive sphere of competence.

76. Therefore, the Chamber finds it appropriate to order Bosnia and Herzegovina, being the legal successor of the Republika Srpska in the Brčko District, to reinstate the applicant into full possession of the plot of land seized by the decision of 26 June 1997, *i.e.* to restore the full extent of cadastral lots nos. 987/4 and 960/5 to the applicant, and to register his rights thereto in the land books.

77. In addition, the Chamber will order the Republika Srpska, being responsible for the seizure of the applicant's land in 1997, to pay to the applicant a lump sum of 2,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") as due compensation for non-pecuniary damages for the fact that he was prevented from using his land for more than six years. This amount is to be paid 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.

78. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in the previous paragraph for the implementation of the present decision or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

79. For the above reasons, the Chamber decides,

1. unanimously, that the application is admissible in its entirety;

2. unanimously, that, with respect to the real property seized and re-allocated by the Municipal Council of Brčko in the procedural decision of 26 June 1997, the Republika Srpska has violated the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. unanimously, that there is no need to examine the case under Article 6 of the Convention;

4. unanimously, to order Bosnia and Herzegovina to allocate to the applicant and to reinstate him into full possession of, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the full size of the plots registered as cadastral lots nos. 987/4 and 960/5 in the land books of the Municipality of Brčko, and to register his rights thereto in the land books;

5. unanimously, to order the Republika Srpska to pay to the applicant a lump sum of 2,000 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;

6. unanimously, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the sum awarded in the previous conclusion from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

7. unanimously, to order both respondent Parties to report to it or to its successor institution within three month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by them to comply with the above orders.

Remedy: in accordance with Rule 63 of the Chamber's Rules of Procedure, as amended on 1 September 2003 and entered into force on 7 October 2003, a request for review against this decision to the plenary Chamber can be filed **within fifteen days** starting on the working day following that on which the Panel's reasoned decision was publicly delivered.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel