DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 March 2003)

Case no. CH/01/8110

D.R.

against

BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 February 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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;

Adopts the following decision pursuant to Articles VIII(2)(c) and XI of the Agreement and Rules 52, 57, and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This application concerns the applicant's attempts to obtain compensation from the Republika Srpska granted to her by the Second Instance Court in Banja Luka in a final and binding judgment of 3 October 2000. The First Instance Court in Banja Luka issued the permission on enforcement of this judgment, which became final and binding on 3 January 2001. However, the Republika Srpska has never paid the compensation to the applicant. Moreover, on 28 May 2002, the "Law on Postponement of Enforcement of Court Decisions on Payment of Compensation for Pecuniary and Non-Pecuniary Damages resulting from War Activities and Non-Payment of Old Foreign Currency Savings Deposits, Payable from the Republika Srpska Budget" entered into force. By this Law, the Republika Srpska has postponed indefinitely the enforcement of court decisions on the payment of compensation for pecuniary and non-pecuniary damages due to war activities, like the judgment obtained by the applicant.

2. The application raises issues under Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the European Convention on Human Rights (the "Convention"); Article 6 of the Convention (right to a court); and Article 13 of the Convention (right to an effective remedy).

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced to the Chamber and registered on 3 December 2001.

4. On 18 December 2001, the applicant requested the Chamber to order the respondent Parties, as a provisional measure, to block the budget accounts of the Republika Srpska until the final payment is made to her upon the final and binding judgment of 3 October 2000. The Chamber did not decide upon that request for a provisional measure.

5. On 16 May 2002, the Chamber transmitted the case to the Republika Srpska for its observations on the admissibility and merits under Articles 6(1), 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

6. On 17 July 2002, the Republika Srpska submitted its written observations on the admissibility and merits of the application.

7. On 25 September 2002, the applicant submitted her written observations in reply.

8. On 7 November 2002, the Second Panel relinquished jurisdiction over this case to the plenary Chamber pursuant to Rule 29(2) of the Chamber's Rules of Procedure[1]. This decision was based upon the fact that the case raises an important issue of general importance and its outcome may affect some 5000 similarly situated persons with postponed compensation awards payable by the Republika Srpska.

9. The Second Panel deliberated on the application on 6 May and 7 November 2002. The plenary Chamber deliberated on the admissibility and merits of the application on 11 January and 6-7 February 2003. On the latter date it adopted the present decision on admissibility and merits.

III. STATEMENT OF THE FACTS

10. The facts presented are not disputed between the parties.

11. On 14 December 1998, the applicant and the family of her late husband (*i.e.*, his mother, father, sister, and son) initiated a lawsuit before the First Instance Court in Banja Luka against the Army of the Republika Srpska seeking compensation for pecuniary and non-pecuniary damages

[1] Rule 29(2) of the Chamber's Rules of Procedure provides, in pertinent part: "Where a case pending before a Panel raises a serious question as to the interpretation of the Agreement …, the Panel may at any time before taking a final decision relinquish jurisdiction in favour of the Plenary Chamber".

resulting from the death of her husband, who was killed on 9 October 1995 while serving in the Army of the Republika Srpska.

12. On 18 April 2000, the First Instance Court in Banja Luka issued a judgment ordering the Army of the Republika Srpska to pay compensation for pecuniary and non-pecuniary damages to the applicant and the family of her late husband in the total amount of 49,000 Convertible Marks (*Konvertibilnih Maraka*, "KM"), plus interest.

13. On 25 May 2000, the Military Attorney's Office of the Army of the Republika Srpska, Department Banja Luka, filed an appeal against the judgment of 18 April 2000 to the Second Instance Court in Banja Luka.

14. On 3 October 2000, the Second Instance Court in Banja Luka, while deciding upon the appeal of the defendant (the Republika Srpska – the Army of the Republika Srpska), issued a judgment partially recognising the appeal. The Second Instance Court reduced the compensation awarded for non-pecuniary damages to the amount of 33,000 KM and left unchanged the compensation awarded for pecuniary damages in the amount of 2,000 KM.

15. On 14 November 2000, the Second Instance Court in Banja Luka issued a procedural decision correcting a technical error in the operative part of the judgment of 3 October 2000.

16. On 24 November 2000, the applicant and the family of her late husband filed a request for enforcement of the judgment of 3 October 2000 of the Second Instance Court and the judgment of 18 April 2000 of the First Instance Court.

17. On 5 December 2000, the First Instance Court in Banja Luka issued a procedural decision enforcing the above-mentioned judgments and ordering the Republika Srpska to pay the awarded amount of compensation, *i.e.*, 35,000 KM, plus interest.

18. On 13 December 2000, the Military Attorney's Office of the Army of the Republika Srpska, Department Banja Luka, filed a complaint as the defendant-debtor against the procedural decision on enforcement of the First Instance Court in Banja Luka of 5 December 2000.

19. On 21 December 2000, the First Instance Court in Banja Luka issued a procedural decision rejecting the defendant-debtor's complaint against the procedural decision of 5 December 2000 as "ill-founded". Thus, the permission on enforcement became final and binding on 3 January 2001.

20. On 27 February 2001, the First Instance Court in Banja Luka sent a letter to Zepter Komerc Banka (the "Bank") in Banja Luka, notifying it that the permission on enforcement in the applicant's case, which was enclosed, became final and binding on 3 January 2001, and that the Bank should act accordingly.

21. On 28 August 2001, the Bank informed the First Instance Court in Banja Luka that the debtor, the Republika Srpska – the Army of the Republika Srpska, had closed its accounts; therefore, the Bank returned all submitted permissions on enforcement, including the one in the applicant's case, to the Court. The Bank further explained that the Ministry of Defence no longer has its accounts with the Bank.

22. To date the Republika Srpska has not paid any compensation to the applicant or the family of her late husband as awarded in the judgments of 18 April 2000 and 3 October 2000 and enforced by the permission on enforcement of 5 December 2000.

IV. RELEVANT LEGAL PROVISIONS

A. Law on Enforcement Procedure of the former Socialist Federal Republic of Yugoslavia

23. The Law on Enforcement Procedure of the former Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 20/78-673, 6/82-149, 74/87-

1742, 57/89-1440, 20/90-820, 35/92-589, Constitutional Court of Yugoslavia II N. 109/91 – OG SFRY no. 63/91-1030; amended by Official Gazette of the Republika Srpska nos. 17/93-670 and 14/94-534), as amended, is still in force in the Republika Srpska and it sets out a detailed regime for the enforcement of court decisions.

24. Article 2 of the Law on Enforcement Procedure states that enforcement is initiated at the request of the person in whose favour a court decision is issued. Article 3, with respect to "competencies", provides that the regular court shall carry out an enforcement, and Article 7 states that the competent court shall issue a decision on enforcement. More specifically, Article 4 provides as follows:

> "The enforcement intended for the realisation of a pecuniary claim and for the assurance of such a claim shall be determined and carried out in the scope required for the payment in full, *i.e.* assurance of that claim."

25. With respect to enforceability of a decision, Article 18 paragraph 1 provides as follows:

> "A court decision or a decision issued in petty offence proceedings shall be enforceable if it is final and binding and if the time limit for voluntary fulfilment of the debtor's obligation has expired."

26. Article 10 of the Law on Enforcement Procedure states that "in enforcement proceedings, the court is obliged to act urgently".

B. Law on Postponement of the Republika Srpska

27. The Law on Postponement of Enforcement of Court Decisions on Payment of Compensation for Pecuniary and Non-Pecuniary Damages resulting from War Activities and Non-Payment of Old Foreign Currency Savings Deposits, Payable from the Republika Srpska Budget (Official Gazette of the Republika Srpska no. 25/02 of 20 May 2002) (the "Law on Postponement") entered into force on 28 May 2002.

28. The basic provision of the Law on Postponement is provided in Article 1, as follows:

> "This Law shall postpone the enforcement of court decisions on the payment of compensation for pecuniary and non-pecuniary damages sustained due to war activities and due to the payment of old foreign currency savings deposits, payable from the budget of the Republika Srpska and made prior to the day this Law entered into force."

29. Article 2 contains definitions, as follows:

> "The pecuniary and non-pecuniary damages sustained due to war activities refers to the damage that occurred due to the war activities on the territory of the Republika Srpska from 20 May 1992 through 19 June 1996.
>
> "The old foreign currency savings deposits refers to savings deposits of physical and legal persons at banks having their seat on the territory of the Republika Srpska that were deposited in those banks on 21 December 1991."

30. Article 3 sets forth the deadline for the validity of the Law on Postponement, as follows:

> "This Law will be applied up to the adoption of a law regulating the manner of settling obligations incurred on the basis of court decisions referred to in Article 1 of this Law."

31. Article 4 provides as follows:

> "This Law shall also pertain to the court decisions referred to in Article 1 of this Law issued during the moratorium, within the meaning of Article 3 of this Law."

V. COMPLAINTS

32. The applicant alleges violations of her rights as protected by Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. She complains that the organs of the respondent Parties have failed to comply with final and binding court decisions ordering the Republika Srpska to pay compensation to her for "war-damages". The applicant asks the Chamber to order the respondent Parties immediately to enforce the final and binding decisions in her favour and the Republika Srpska "to fulfil its obligation toward its creditor [*i.e.*, the applicant] in the shortest possible time".

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party—the Republika Srpska

33. On 25 July 2002, the Republika Srpska submitted its observations on the admissibility and merits of the application. It considers the facts presented in the applications "irrefutable". It further considers the application admissible according to Article VIII(2)(a) of the Agreement. However, the Republika Srpska contends that it cannot enforce the procedural decision of 5 December 2000 due to the Law on Postponement (see paragraphs 27-31 above). According to that Law on Postponement, enforcement of court decisions to pay pecuniary and non-pecuniary damages from the Republika Srpska budget is postponed until a law is adopted which will regulate the manner in which such obligations shall be executed. The Republika Srpska further explains as follows:

> "There are about 5000 cases waiting for enforcement after the enforcement proceedings are implemented. These cases are the same as or similar to the case of D.R.
>
> "The adoption of the Law is conditioned by a large amount of budgetary obligations on these grounds, as well as on the grounds of the payment of the old foreign currency savings deposits, which is impossible to finance from the Republika Srpska budget without jeopardising the financing of the public sector, *i.e.*, calling into question the operation and financing of beneficiaries of the budget.
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> "The budget was structured in this way upon the demand of the International Monetary Fund."

B. The applicant

34. The applicant submitted her observations in reply on 25 September 2002. She considers the position of the Republika Srpska to be "unacceptable". She highlights that the procedural decision on enforcement of 5 December 2000 was effective two years before the adoption of the Law on Postponement, "which the respondent Party refers to as a hindrance to the enforcement of its obligation". She argues that the Republika Srpska violates her human rights "by avoiding the enforcement of its obligations in such a way when it had sufficient time and funds to perform its obligation before the mentioned Law was adopted".

35. She further mentions that she is a single mother with limited funds and an unresolved housing situation. She observes that "the respondent Party has the ability to fulfil its duty in some other way, *e.g.*, by allocating a suitable apartment for use with the right to purchase it, under the conditions valid for occupancy right holders, or allocating free of charge state-owned business premises for a certain period of time, and in that way compensate the obligation owed to its creditors". In closing, she opines that "the respondent Party does not have the good will to fulfil its obligations, albeit it is obliged to do so under all the positive legal regulations".

VII. OPINION OF THE CHAMBER

A. Admissibility

36. 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.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

37. The applicant has directed her application against two respondent Parties: Bosnia and Herzegovina and the Republika Srpska. The Chamber notes, however, that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions she complains of, nor can the Chamber on its own motion find any such evidence. It follows that the application, insofar as it is directed against Bosnia and Herzegovina, is incompatible *ratione personae* with the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against Bosnia and Herzegovina.

38. With respect to the Republika Srpska, the Chamber notes that in its observations of 25 July 2002, it admitted that the application is admissible under Article VIII(2)(a) of the Agreement, and it raised no objections to the admissibility of the application. As no grounds for declaring the application inadmissible have been raised or appear from the application, the Chamber declares the application admissible in its entirety as against the Republika Srpska.

B. Merits

39. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above 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 in the Convention.

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

40. 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."

41. 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 the 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/97/48 *et al., Poropat and Others*, decision on admissibility and merits of 10 May 2000, paragraph 162, Decisions January–June 2000).

a. Existence of a "possession"

42. The applicant complains about her inability to obtain the compensation awarded to her by the Second Instance Court in Banja Luka in the final and binding judgment of 3 October 2000, upon which the First Instance Court in Banja Luka issued the final and binding permission on enforcement of 5 December 2000. The Chamber has previously held that an enforceable claim constitutes a "possession", within the meaning of Article 1 of Protocol No. 1 to the Convention (case no. CH/98/1019, *Sp.L., J.L., Sv.L. and A.L.*, decision on admissibility and merits of 3 April 2001, paragraph 37, Decisions January–June 2001; case no. CH/97/104 *et al., Todorović and others*, decision on admissibility and merits of 7 October 2002, paragraph 151, Decisions July–December 2002; *see also* Eur. Court HR, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, paragraphs 61-62 (recognising a final and binding and enforceable arbitration award as a "possession")).

43. Therefore, the Chamber finds that the applicant's claim against the Republika Srpska to obtain the compensation awarded to her constitutes a possession within the meaning of Article 1 of Protocol No. 1 to the Convention.

b. Interference with a protected possession

44. As the Chamber has previously held, Article 1 of Protocol No. 1 to the Convention imposes positive obligations on the Parties to provide effective protection for the rights of individuals. Such positive obligations extend to the enforcement of court decisions (case no. CH/99/1859, *Jeličić*, decision on admissibility and merits of 12 January 2000, paragraph 31, Decisions January–June 2000; *Todorović and others* at paragraph 152), such as the one at issue in the present case. It is indisputable and uncontested that the Republika Srpska has not paid the compensation awarded to the applicant and has not otherwise sought enforcement of the final and binding court judgment ordering such payment of compensation to the applicant.

45. The Republika Srpska argues that it has not enforced the judgment in the applicant's favour due to the Law on Postponement. However, the Chamber recalls that in *Stran Greek Refineries and Stratis Andreadis v. Greece*, the European Court of Human Rights (the "European Court") found an interference with the applicants' protected possession when Greece enacted a law declaring arbitration awards against it invalid and unenforceable, thereby rendering a final and binding arbitration award in the applicants' favour null and void. The European Court explained that as a result of the law, "it was impossible for the applicants to secure enforcement of an arbitration award having final effect and under which the State was required to pay them specified sums … or even for them to take further action to recover the sums in question through the courts". This constituted an interference with the applicants' protected possession (Eur. Court HR, judgment of 9 December 1994, Series A no. 301-B, paragraph 67).

46. Likewise, the Chamber finds that both the failure of the authorities of the Republika Srpska to take any steps to enforce the final and binding judgment of 3 October 2000, pursuant to the final and binding permission on enforcement of 5 December 2000, and the enactment of the Law on Postponement which made such enforcement impossible after 28 May 2002, constitute interferences with the applicant's right to peaceful enjoyment of her possessions.

c. Principle of lawfulness

47. 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 possessions 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).

48. The Republika Srpska contends that it cannot enforce the permission on enforcement due to the Law on Postponement, which postpones the enforcement of court decisions ordering the payment of compensation for damages from the Republika Srpska budget until the adoption of a law regulating the manner in which such obligations shall be executed.

i. Lack of enforcement before 28 May 2002

49. The Chamber recalls that the Law on Postponement entered into force on 28 May 2002. The Republika Srpska has offered no explanation for how its failure to execute the final and binding judgment in the applicant's favour between the period of 3 January 2001, the date when the permission on enforcement became final and binding, and 28 May 2002, the date when the Law on Postponement entered into force, could be "subject to the conditions provided for by law" or otherwise lawful. To the contrary, the Chamber notes that the Law on Enforcement, which was applicable during that time period, provides that the competent court shall carry out an enforcement and that the enforcement of a pecuniary claim requires the payment in full of the claim (see paragraph 24 above).

50. The Chamber further notes that the impossibility to enforce the judgment in the applicant's favour prior to 28 May 2002 was due to the fact that the Ministry of Defence of the Republika Srpska had closed its accounts with the Bank to which the permission on enforcement in the applicant's case was submitted. Therefore, on 28 August 2001, the Bank returned all submitted permissions on enforcement, including the one in the applicant's case, to the First Instance Court in Banja Luka (see paragraph 21 above).

51. The Chamber recalls the persuasive reasoning set forth by the Constitutional Court of the Republika Srpska in its decision nos. U-36/96 and 49/96 of 30 March 1999 concerning the suspension of payment of "frozen" bank accounts. In that decision, the Constitutional Court considered whether the Decision of the Government of the Republika Srpska on the suspension of payment of "frozen" bank accounts of 3 May 1996 (OG RS no. 10/96 of 27 May 1996) was compatible with the Constitution of the Republika Srpska. The Constitutional Court decided that it was not, reasoning as follows:

> "The Constitution of the Republika Srpska established that the constitutional regime of the Republika Srpska is based on the separation of powers (Article 5), *i.e.*, the executive power is exercised by the Government, while the courts exercise the judicial power (Article 69). ... Article 121 of the Constitution confirms the independence and self-reliance of the courts which adjudicate on the basis of the Constitution and laws.
>
> "In the Court's opinion, the contested decision of the Government ignores the independence and self-reliance of the courts, and consequently, the principle of separation of powers established by Articles 5 and 69 of the Constitution, because it prevents the execution of legally valid and enforceable decisions by the regular courts; thus, the Government went beyond the scope of its competence. The executive power had no, and cannot have any, influence upon the judicial power."

52. Thus, in the case of the suspension of payment of "frozen" bank accounts, the Constitutional Court of the Republika Srpska found the interference by the executive power with the enforcement of

final and binding judicial decisions to be unconstitutional and thus unlawful, even though it was based on a formal decision by the Government of the Republika Srpska (decision nos. U-36/96 and 49/96 of 30 March 1999). In the present case before the Chamber, there appears to have been simply a *de facto* decision by the Government not to pay sums due to citizens under final and binding court judgments. The Chamber finds that such a *de facto* suspension of payment pursuant to permissions on enforcement of final and binding court judgments must be all the more unlawful under the Constitution and the laws of the Republika Srpska.

53. Therefore, the Chamber concludes that the failure of the authorities of the Republika Srpska to execute the final and binding court judgment in the applicant's favour prior to 28 May 2002 was not lawful.

ii. Lack of enforcement after 28 May 2002

54. With respect to Republika Srpska's lack of enforcement of the final and binding judgment in the applicant's favour after 28 May 2002, it is indisputable that the Law on Postponement prevents such enforcement until "the adoption of a law regulating the manner of settling obligations incurred on the basis of court decisions referred to in Article 1 of this Law" (see paragraph 30 above). Article 1 of the Law on Postponement expressly pertains to "the enforcement of court decisions on the payment of compensation for pecuniary and non-pecuniary damages sustained due to war activities … payable from the budget of the Republika Srpska" (see paragraph 28 above). The judgment of 3 October 2000 in the applicant's favour is precisely such a court decision (see paragraphs 11-14 above).

55. Therefore, the Chamber concludes that the failure of the authorities of the Republika Srpska to enforce the final and binding court judgment in the applicant's favour after 28 May 2002 was "subject to the conditions provided for by law" and lawful.

d. In the public interest

56. The notion of "public interest" within the meaning of Article 1 of Protocol No. 1 is "necessarily extensive" (Eur. Court HR, *James v. United Kingdom*, judgment of 21 February 1986, Series A no. 98-B, paragraph 46). In determining the existence of such a "public interest", the national authorities enjoy a certain margin of appreciation. "Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is 'in the public interest'". Therefore, the European Court "will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation" (*id.*).

57. In its observations of 25 July 2002, the Republika Srpska explains that the adoption of the Law on Postponement, and thereby its failure to pay the final and binding court judgment in the applicant's favour, was conditioned upon significant budgetary obligations, which make it impossible for it to meet the financial obligations that are suspended by the Law on Postponement "without jeopardising the financing of the public sector". It further explains that "the budget was structured in this way upon the demand of the International Monetary Fund" (see paragraph 33 above).

58. Taking into account the prevailing circumstances in the country and the demands purportedly placed upon the Republika Srpska by the International Monetary Fund, the Chamber accepts that the justification set forth by the Republika Srpska falls within its margin of appreciation and satisfies the requirement that the interference at issue has occurred "in the public interest".

e. Fair balance test

59. In order for an interference with a protected possession to be permissible, it must not only serve a legitimate aim in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (Eur. Court HR, *James v. United Kingdom*, judgment of 21 February 1986, Series A no. 98-B, paragraph 50). Thus, the European Court has recognised that running through the three distinct rules in Article 1 of Protocol No. 1 to the Convention is a "fair balance" test; that is, "the Court must determine whether

a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1" (Eur. Court HR, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, paragraph 69 (citation omitted)).

60. In preparing to apply the fair balance test in the present application, the Chamber finds it useful to recall the European Court's reasoning in the analogous case of *Stran Greek Refineries and Stratis Andreadis v. Greece*. In that case, as explained above, Greece enacted a law that rendered invalid and unenforceable a final and binding arbitration award in the applicants' favour against the State for the payment of compensation. In justifying the new law, the State argued that it was enacted to eliminate the economic consequences of the previous dictatorship and that the applicants' rights derived from a preferential contract concluded with that previous dictatorship which prejudiced the national economy. The applicants replied that it would be unjust if every legal relationship entered into with the previous dictatorship was regarded as invalid after it ceased to be in power. In applying the fair balance test, the European Court noted that the State had opted for the arbitration procedure, the result of which it later sought to avoid. The State was under a duty to pay the applicants the sum awarded upon the conclusion of the arbitration proceedings. However, after the issuance of the final and binding arbitration award against the State, the legislature enacted the law that terminated the contract containing the arbitration clause, declared the arbitration clause void, and annulled the arbitration award in the applicants' favour. In so doing, "the legislature upset, to the detriment of the applicants, the balance that must be struck between the protection of the right of property and the requirements of the public interest". Accordingly, the European Court found a violation of Article 1 of Protocol No. 1 (judgment of 9 December 1994, Series A no. 301-B, paragraphs 73-75).

61. Similarly, in *Pressos Compania Naviera S.A. v. Belgium*, the European Court also found that the State exceeded its margin of appreciation (Eur. Court HR, judgment of 20 November 1995, Series A no. 332-B). In that case, the applicants, who were shipowners, sued the State for damages when their ships were involved in collisions due to the negligence of pilots under the State's responsibility. After they sustained their damage, the State passed legislation to remove the right to compensation under such circumstances. Although the applicants' claims for damages had not yet been recognised in a final and binding judicial decision, the European Court found that the claims constituted assets and therefore amounted to protected possessions (*id.* at paragraph 31). The legislation exempting the State from liability for the negligent acts within its responsibility interfered with those protected possessions (*id.* at paragraph 34). The State argued that the legislation was necessary in order to protect its financial interests. The applicants replied that they were forced to bear an excessive burden. In applying the fair balance test, the European Court noted that the legislation at issue retroactively extinguished, without providing any compensation, very high claims for damages that victims of negligence could have pursued against the State, some of which were pending at the time. Such retrospective effect constituted "a fundamental interference with the applicants' rights" and was "inconsistent with preserving a fair balance between the interests at stake". Consequently, to the extent the legislation concerned events prior to its entry into force, the European Court found that it breached Article 1 of Protocol No. 1 (*id.* at paragraphs 43-44).

62. The Chamber notes that the Law on Postponement contains no deadline for the duration of the postponement of enforcement of court decisions from the budget of the Republika Srpska, as well as no deadline for the adoption of a new law regulating compliance with such obligations. The Law on Postponement also contains no provision guaranteeing future payment of postponed court decisions and no provision compensating individuals for delays in enforcement of postponed court decisions or otherwise compensating them for the interference with their valuable material assets. The Law on Postponement thus, in effect, legislates a blanket suspension on the enforcement of court decisions from the budget of the Republika Srpska, thereby allowing the Republika Srpska to avoid indefinitely the consequences of its actions which gave rise to the subject court decisions. Moreover, the Republika Srpska's obligation to pay the compensation for pecuniary and non-pecuniary damages in the present case was established in a final and binding court judgment of 3 October 2000, and the Republika Srpska failed to pay this enforceable obligation for almost 17 months after it was legally obliged to do so and prior to the date the Law on Postponement entered into force on 28 May 2002. These facts make the blanket suspension on the enforcement of court

decisions even more serious as applied to the present case. Therefore, in the Chamber's view, the Law on Postponement does not strike a fair balance between the general interests of the community to finance the public sector and the applicant's fundamental human rights.

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

63. As explained above, the Chamber finds that the Republika Srpska's failure to take any steps to enforce the final and binding judgment of 3 October 2000 and to pay the applicant the compensation awarded to her therein prior to 28 May 2002 constitutes an unlawful interference with her protected possession. Moreover, the Law on Postponement, which entered into force on 28 May 2002, further interferes in a disproportionate manner with the applicant's protected possession. For these reasons, the Chamber concludes that the Republika Srpska has violated the applicant's right protected by Article 1 of Protocol No. 1 to the Convention, both before and after the Law on Postponement entered into force.

2. Article 6 of the Convention

64. The applicant did not specifically allege a violation of her rights as guaranteed by Article 6 paragraph 1 of the Convention. The Chamber raised this issue on its own motion when transmitting the application to the Republika Srpska.

65. Article 6 paragraph 1 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. …"

66. The applicant's right under the final and binding court judgment ordering the payment of compensation to her is pecuniary in nature and therefore constitutes a "civil right" within the meaning of Article 6 paragraph 1 of the Convention (Eur. Court HR, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, paragraph 40). Moreover, the Chamber has previously held that Article 6 paragraph 1 applies to enforcement proceedings following from a tribunal which is within its scope (case no. CH/99/1859, *Jeličić*, decision on admissibility and merits of 12 January 2000, paragraph 23, Decisions January–June 2000).

a. Lack of enforcement before 28 May 2002

67. In considering whether the Republika Srpska violated the applicant's right to a court by failing to enforce the final and binding judgment in her favour prior to 28 May 2002, the Chamber recalls the European Court's decision in *Hornsby v. Greece*, in which it explained as follows:

> "[A]ccording to its established case-law, Article 6 paragraph 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it 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. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 paragraph 1 should describe in detail procedural guarantees afforded to litigants — proceedings that are fair, public and expeditious — without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6 (Eur. Court HR, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, paragraph 40 (citations omitted)).

68. Similarly, the Chamber has held that when the competent authorities take no action to enforce a final and binding court decision, particularly when the applicable law provides for such action, the authorities deprive Article 6 paragraph 1 "of all useful effect", thereby resulting in a violation of that Article (case no. CH/96/17, *Blentić*, decision on admissibility and merits of 5 November 1997, paragraph 35, Decisions March 1996–December 1997; case no. CH/97/28, *M.J.*, decision on admissibility and merits of 7 November 1997, paragraph 36, Decisions March 1996–December 1997; case no. CH/96/27, *Bejdić*, decision on admissibility and merits of 2 December 1997, paragraph 42, Decisions 1998; case no. CH/99/1859, *Jeličić*, decision on admissibility and merits of 12 January 2000, paragraphs 25-27, Decisions January–June 2000; case no. CH/97/104 *et al., Todorović and others*, decision on admissibility and merits of 7 October 2002, paragraphs 156-158, Decisions July–December 2002).

69. There is no dispute in the present case that the final and binding judgment of 3 October 2000 of the Second Instance Court in Banja Luka is fully binding and enforceable, pursuant to the final and binding permission on enforcement of the First Instance Court in Banja Luka of 5 December 2000. There is also no dispute that the Republika Srpska has not enforced that judgment or otherwise compensated the applicant, as it has been obliged to do since 3 January 2001. The Republika Srpska has offered no explanation for its failure to secure the applicant's rights prior to 28 May 2002, when the Law on Postponement entered into force, thereby suspending its power to enforce the mentioned decisions. Accordingly, with respect to the time period prior to 28 May 2002, the Republika Srpska violated the applicant's right to a court as guaranteed by Article 6 paragraph 1 of the Convention.

b. Lack of enforcement after 28 May 2002

70. The Chamber is aware that after the entry into force of the Law on Postponement on 28 May 2002, the enforcement of the final and binding decisions at issue in the present case became legally impossible until "the adoption of a law regulating the manner of settling obligations incurred on the basis of court decisions" for the payment of compensation for war damages from the Republika Srpska budget (see paragraph 30 above). The question for the Chamber is whether, despite the enactment of the Law on Postponement, the Republika Srpska has violated the applicant's right to a court after 28 May 2002 by failing to execute the final and binding judgment in her favour.

71. In *Stran Greek Refineries and Stratis Andreadis v. Greece*, the European Court considered whether the legislature's intervention into pending judicial proceedings in which the State was a party by the enactment of a law that terminated the disputed contract and annulled the arbitration award in the applicants' favour (see paragraph 60 above) complied with the requirements of Article 6 paragraph 1 of the Convention. The European Court found that it did not, explaining as follows:

> "The principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute. … In conclusion, the State infringed upon the applicants' rights under Article 6 § 1 by intervening in a manner which was decisive to ensure that the — imminent — outcome of the proceedings in which it was a party was favourable to it" (judgment of 9 December 1994, Series A no. 301-B, paragraphs 49-50).

72. Similarly, the Chamber finds that by enacting the Law on Postponement, the National Assembly of the Republika Srpska impermissibly interfered with the administration of justice in cases in which the Republika Srpska is or has been a party. The Law on Postponement, in effect, postpones indefinitely the enforcement of court decisions from the budget of the Republika Srpska since it contains no deadline for the duration of the postponement of enforcement of court decisions, as well as no deadline for the adoption of a new law regulating compliance with such obligations. In this manner, the Law on Postponement infringes upon the application of the rule of law because the Republika Srpska is permitted to avoid the consequences of its actions, which gave rise to the subject court decisions. In addition, the damaged individuals, in whose favour the court decisions have been issued, are provided no right to a court for the enforcement of their legally recognised rights.

c. Conclusion as to Article 6 of the Convention

73. For these reasons, the Chamber concludes that the Republika Srpska has violated the applicant's right to a court as guaranteed by paragraph 1 of Article 6 of the Convention, both before and after the Law on Postponement entered into force on 28 May 2002.

3. Article 13 of the Convention

74. Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

75. Taking into consideration its conclusion that the Republika Srpska has violated the applicant's rights protected by Article 6 of the Convention, the Chamber decides that it is not necessary separately to examine the application under Article 13 of the Convention.

VIII. REMEDIES

76. 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.

77. In her application and submission of 25 September 2002, the applicant asks the Chamber to order the respondent Party immediately to satisfy its financial obligation to her, plus the payment of legal interest calculated as of 3 January 2001 until the date of settlement in full.

78. The Chamber notes that according to the final and binding judgment of 3 October 2000 of the Second Instance Court in Banja Luka, the Republika Srpska is obliged to pay compensation to the applicant in the amount of 33,000 KM for non-pecuniary damages and 2,000 KM for pecuniary damages, plus legal interest (see paragraphs 12-14 above). The permission on enforcement of this judgment became final and binding on 3 January 2001 (see paragraphs 17-19 above).

79. The Chamber takes into account its findings that the Law on Postponement violates the applicant's right to peaceful enjoyment of her possessions, guaranteed by Article 1 of Protocol No. 1 to the Convention, and right to a court, guaranteed by Article 6 of the Convention. It further recalls Article 3 of the Law on Postponement, which provides that the Law shall be applied until "the adoption of a law regulating the manner of settling obligations incurred on the basis of court decisions" subject to the Law (see paragraph 30 above). Therefore, the Chamber orders the Republika Srpska to enact, within six months from the date of delivery of the present decision, such law, which will regulate the manner of settling obligations payable from the budget of the Republika Srpska and incurred on the basis of court decisions on the payment of compensation sustained due to war activities. The new law must clearly address the manner of settling such obligations in a manner compatible with the Convention, in particular Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention, but the precise manner of settling such obligations shall be determined by the Republika Srpska in the new law.

80. Furthermore, considering that the Republika Srpska failed to pay the enforceable obligation in the applicant's favour for almost 17 months after it was legally obliged to do so and prior to the date the Law on Postponement entered into force on 28 May 2002, the Chamber finds it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to obtain enforcement of the final and binding judgment in her favour prior to 28 May 2002. Accordingly, the Chamber orders the Republika Srpska to pay to the applicant within one month of the date of delivery of this decision the sum of 1000 Convertible Marks (*Konvertibilnih Maraka*) as compensation for non-pecuniary damages.

81. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. Interest shall be paid as of one month from the date of delivery of this decision on the sum awarded or any unpaid portion thereof until the date of settlement in full.

82. The Chamber reserves the right to order additional remedies in this case after six months have passed from the date of delivery of the present decision, should it consider such course of action warranted in the light of the steps taken by the Republika Srpska to give effect to this decision.

83. The Republika Srpska shall report to the Chamber on the steps taken by it to comply with the present decision within six months from the date of delivery of this decision.

IX. CONCLUSIONS

84. For the above reasons, the Chamber decides,

1. unanimously, that the application is inadmissible as against Bosnia and Herzegovina;

2. unanimously, that the application is admissible as against the Republika Srpska;

3. unanimously, that the Republika Srpska has violated the right of the applicant to peaceful enjoyment of 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 Human Rights Agreement;

4. unanimously, that the Republika Srpska has violated the right of the applicant to a court as guaranteed by paragraph 1 of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it is unnecessary for the Chamber separately to examine the application under Article 13 of the Convention;

6. unanimously, to order the Republika Srpska to enact, within six months from the date of delivery of the present decision, *i.e.*, by 7 September 2003, a law which will regulate, in a manner compatible with the Convention, the manner of settling obligations payable from the budget of the Republika Srpska and incurred on the basis of court decisions on the payment of compensation sustained due to war activities, as mentioned in Article 3 of the "Law on Postponement of Enforcement of Court Decisions on Payment of Compensation for Pecuniary and Non-Pecuniary Damages resulting from War Activities and Non-Payment of Old Foreign Currency Savings Deposits, Payable from the Republika Srspska Budget";

7. unanimously, to order the Republika Srpska to pay to the applicant, at the latest by 7 April 2003, 1000 Convertible Marks as compensation for non-pecuniary damages in recognition of the sense of injustice she has suffered as a result of her inability to obtain enforcement of the final and binding judgment in her favour prior to 28 May 2002;

8. unanimously, to order the Republika Srpska to pay simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding conclusion after 7 April 2003 until the date of settlement in full;

9. unanimously, to reserve the right to order additional remedies in this case after 7 September 2003; and

10. unanimously, to order the Republika Srpska to report to the Chamber on the steps taken by it to comply with the present decision by 7 September 2003.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex Concurring opinion of Mr. Manfred Nowak

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the concurring opinion of Mr. Manfred Nowak.

CONCURRING OPINION OF MR. MANFRED NOWAK

The Chamber has found a violation of Article 6 of the Convention on the grounds that the final and binding judgment of the Second Instance Court in Banja Luka, according to which the Republika Srpska is obliged to pay compensation to the applicant in the amount of 35,000 KM, has not been enforced. As a remedy, the applicant has asked the Chamber to order the respondent Party immediately to satisfy its financial obligation to her. In my view, this would have been the most appropriate remedy for the Chamber to have ordered under Article XI(1)(b) of the Agreement, since it would have provided the applicant full reparation without further delay. To grant this remedy, in my opinion, would not have prevented the Chamber to also order the respondent Party, as it did in conclusion no. 6, to take appropriate legislative action in order to avoid similar violations from occurring in the future.

(signed)
Manfred Nowak