DECISION ON ADMISSIBILITY AND MERITS
(delivered on 4 April 2003)

Case no. CH/98/1251

Smail SOFTIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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;

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

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina, of Bosniak origin. He is both an owner and co-owner of real property in the Gradiška area in the Republika Srpska which he was forced to leave during the armed conflict. During his absence, his property was occupied by refugees and displaced persons of Serb origin.

2. The case concerns the applicant's attempts to regain possession of his property before administrative and judicial authorities of the Republika Srpska. With this aim, the applicant applied to the Ministry for Refugees and Displaced Persons in Gradiška (the "Ministry") under the Law on the Use of Abandoned Property, which entered into force in February 1996 ("the old Law", see paragraphs 31-37 below) and under the Law on Cessation of the Application of the Law on the Use of Abandoned Property, which entered into force in December 1998 ("the new Law", see paragraphs 38-52 below). The applicant also initiated proceedings before the Court of First Instance in Gradiška ("the Court") in 1998. On 17 May 2000 and again on 29 June 2001, the respondent Party informed the Chamber that the applicant had been reinstated into possession of his real property in October 1999. However, the applicant disputed this information, and the respondent Party later explained that it had received incorrect information from the Ministry. Finally, on 18 November 2002, the applicant was in fact reinstated into possession of his real property.

3. The case raises issues principally under Article 6 (right to a fair hearing) and Article 8 (right to home) of the European Convention on Human Rights (the "Convention") and under Article 1 of Protocol No. 1 to the Convention (peaceful enjoyment of possessions).

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 23 October 1998. At the beginning the applicant contacted the Chamber through the legal assistance center "Terra" in Gradiška.

5. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to reinstate him into possession of his property. On 10 March 1999, while deciding along with a group of 19 cases (cases nos. CH/98/1118 *et al., Hasan TUFEKOVIĆ and Others v. the Republika Srpska*), the Second Panel of the Chamber decided to reject the provisional measure requested. It further decided to transmit the case, along with other similar cases, to the respondent Party for its observations on the admissibility and merits. On 17 March 1999, the application was so transmitted.

6. On 24 March 1999, the observations of the respondent Party on the admissibility of the case were received by the Chamber[1]. On 13 April 1999, these observations were sent to the applicant and he was asked to submit any further observations he wished to make in reply. On 19 April 1999, the representative of the applicants[2] submitted further observations to the Chamber in response to the respondent Party's observations of 24 March 1999.

7. On 20 April 1999, the applicant informed the Chamber that the Ministry had issued a procedural decision, dated 28 March 1999, confirming his property rights and terminating the right of the current occupants to use his property. He underlined, however, that he did not repossess his property. In the same submission, he presented a compensation claim.

8. On 21 May 1999, the Chamber sent the applicant's further observations to the respondent Party for its additional observations in reply.

[1] The Chamber notes that the submissions of the respondent Party prior to 17 May 2000 were of a general nature and related to the entire mentioned group of 19 similar cases.

[2] The Chamber notes that the submissions made on behalf of the applicant prior to 20 April 2000 were related to the group of similar cases.

9. On 22 June 1999, the respondent Party submitted its observations upon the applicant's compensation claim.

10. On 17 May 2000 and 29 June 2001, the respondent Party informed the Chamber that the applicant had repossessed his property in October 1999.

11. In his letter of 1 November 2001, the applicant disputed the information provided by the respondent Party and stressed that he had not repossessed all his property.

12. On 19 September 2002, the applicant informed the Chamber that there had been no factual changes in his proceedings before the Ministry.

13. On 23 January 2003, upon the Chamber's request, the respondent Party confirmed that the applicant did not regain possession over all his property in October 1999 and that the information it had earlier provided to the Chamber (see paragraph 10 above) was based upon incorrect information it received from the Ministry. The respondent Party asserted that the applicant had finally been reinstated into possession of all his property on 18 November 2002.

14. On 3 February 2003, the applicant confirmed the respondent's Party information of 23 January 2003. Furthermore, he explained that while he considers this part of his application to be resolved, he maintains his compensation claim.

15. The Chamber deliberated on the admissibility and merits of the application on 6 March 2003. On the same date it adopted the present decision.

III. STATEMENT OF THE FACTS

16. The applicant is the owner of a house situated in Orahova, Municipality Gradiška, Cadastre lot no. 2251 registered at plot no. 606 and a co-owner, together with his brother, of another house also situated in Orahova, Municipality Gradiška, registered at plot no. 467.

17. As a result of the armed conflict, the applicant was forced to leave his property. During his absence, his property was occupied by refugees and displaced persons of Serb origin in accordance with decisions of the Commission for Refugee Accommodation and Management of Abandoned Property, issued in accordance with the old Law.

18. On 20 August 1998, the applicant applied to the Ministry to regain possession of his property under the old Law. On 24 September 1998, he appealed to the second instance organ within the Ministry. No decision was reached upon his appeal. In 1998 the applicant also initiated proceedings before the Court of First Instance in Gradiška to regain possession of his property.

19. On 25 January 1999, the applicant also applied for repossession of his property under the new Law.

20. On 28 March 1999, the Ministry issued a procedural decision recognising the applicant's right to regain possession over the properties concerned (see paragraph 16 above) and terminating the right of the temporary occupants to use them. The procedural decision provided that the right of the temporary users to use the properties in question expired on 28 June 1999.

21. Sometime in late 1999, the applicant and his brother were reinstated into possession of their co-owned property registered at plot no. 467.

22. On 31 July 2000, the applicant submitted a proposal to the Ministry for enforcement of the procedural decision of 28 March 1999.

23. On 11 April 2001, the First Instance Court in Gradiška, after three years of proceedings, issued a judgment ordering the temporary occupant to vacate the property registered at plot no. 606

within the time-limit of 15 days starting from the date when the judgment became final and binding. It is further clear from the reasoning of the decision that the Ministry's procedural decision of 28 March 1999 had been partially enforced in late 1999 (on an exact date unknown to the Chamber) and that the applicant had repossessed his co-owned property registered at plot no. 467 at that time. However, the applicant's attempts to repossess the remainder of his property were unsuccessful for the next three years.

24. On 18 November 2002, the applicant finally repossessed the property he owns registered at plot no. 606.

IV. RELEVANT LEGAL PROVISIONS

A. Law on General Administrative Procedure

25. The Law on General Administrative Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia — hereinafter "OG SFRY" — no. 47/86) was taken over as law of the Republika Srpska. This Law was applicable at the time when the Ministry's procedural decision of 28 March 1999 was issued and when it became enforceable. The new Law on General Administrative Procedure came into force in March 2002 (Official Gazette of the Republika Srpska — hereinafter "OG RS" — no. 13/02), but all provisions relevant to this case remained unchanged. The Law on General Administrative Procedure (OG SFRY no. 47/86) governs all administrative proceedings and the relevant provisions are summarised below.

26. Article 2 provides that individual issues of procedure for a specific administrative area may be differently regulated by a special law. Under Article 3, all issues that are not regulated by a special law are to be dealt with under the Law on General Administrative Procedure.

27. Chapter XVII (Articles 270–288) concerns the procedure for enforcement of rulings and conclusions.

28. Article 270 (now Article 255) states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of an appeal expires without any such appeal having been submitted. Further, if the procedural decision provides that the action that is subject to enforcement must be enforced within a given deadline, then the procedural decision becomes enforceable upon the expiration of such deadline after the date of delivery of the procedural decision to the party.

29. Article 274 (now Article 258) states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

30. Article 275 (now Article 259) states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions like the one at issue in the present case (*i.e.* for reinstatement into possession of property) shall be carried out by an administrative procedure.

B. Law on the Use of Abandoned Property

31. The Law on the Use of Abandoned Property (OG RS no. 3/96) ("the old Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the Official Gazette of the Republika Srpska on 26 February 1996, and it entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property shall be considered as abandoned, and it sets out the categories of persons to whom abandoned property may be allocated. The provisions of the old Law, insofar as they are relevant to the present case, are summarised below.

32. Articles 2 and 11 define "abandoned property" as real and personal property, which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

33. Article 3 states that abandoned property shall be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property shall be carried out by the appropriate administrative bodies in each municipality.

34. Articles 39-42 set out the terms upon which the owner of property that has been declared abandoned may seek to regain possession of it.

35. Article 39 reads as follows:

> "The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina, and the Republic of Croatia."

36. Article 40 reads as follows:

> "In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.
>
> "If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:
>
> - within 30 days from the day the person who was the occupier of the property returns to his property or apartment
> - at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned, as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation. (...)"

37. Article 42 reads as follows:

> "The provisions of Articles 39-41 of this Law shall be applied on the basis of reciprocity."

C. Law on the Cessation of the Application of the Law on the Use of Abandoned Property

38. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS nos. 38/98, 41/98, 12/99, 31/99, 38/99, 65/01, 13/02, 64/02) ("the new Law") establishes a detailed framework for persons to regain possession of property considered to be abandoned. At the time when the Ministry issued its procedural decision on 28 March 1999, the new Law, together with the amendments of 1998, were applicable. Accordingly, these are the provisions explained below.

39. The new Law renders the old Law out of force.

40. Article 2 states that all decisions made under the old Law granting temporary or permanent rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new Law.

41. Article 3 gives the owner, possessor, or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he/she did before 30 April 1991 or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor", or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned.

42. Article 6 concerns the arrangements to be made for persons who are required to vacate property in order to allow the previous owner, possessor, or user to return. If such a person cannot, or does not wish to, return to his/her pre-war home, and he/she has not been provided with alternative temporary accommodation, then the relevant body of the Ministry (*i.e.* the local Commission) shall provide that person with appropriate accommodation before the expiry of the deadline for him/her to vacate the property concerned.

43. If a person who temporarily occupies a property is to be evicted from it and provides evidence that he/she applied to regain possession of his/her pre-war home, then that person cannot be evicted until he/she can regain possession or freely dispose of his/her own home. An exception to this prohibition on eviction exists where the temporary occupant is provided with alternative accommodation within a period of one year of providing evidence of an application to regain possession of his/her own pre-war home.

44. If the person who is required to vacate the property has had his/her request to return to his/her property resolved, then any failure of the responsible authority to provide alternative accommodation for such a person cannot delay the return of the owner, possessor, or user of such property.

45. If a temporary occupier of abandoned property occupies that property without a legal basis, then the Ministry is not obliged to provide him/her with alternative accommodation.

46. Article 7 states that the owner, possessor, or user of real property shall have the right to submit a claim for repossession of his/her property at any time. Article 8 states that such claims may be filed with the responsible body of the Ministry (*i.e.* the local Commission). This Article also sets out the procedure for lodging claims and the information that must be contained in such a claim.

47. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from its receipt of a claim.

48. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Procedure and treated as an expedited procedure.

49. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his/her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property that is sooner than 90 days from the date of lodging the application. If a property is not currently occupied, then the owner, possessor, or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation.

50. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Commission for Real Property Claims of Refugees and Displaced Persons (the "CRPC"). If this occurs, then all other proceedings regarding the property, including those under Article 11, shall be stayed pending the final decision of the CRPC. Any decision of the CRPC shall be enforced by the appropriate authorities of the Republika Srpska.

51. Article 27 states that a decision made under Article 11 may be appealed to the Ministry within 15 days of receipt of such decision.

52. Article 29 of the Law requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the Law. This instruction entered into force on 21 January 1999 (OG RS no. 1/99). Article 6 of this instruction states that a person who has submitted a claim under the previously applicable regulations (*i.e.* under the old Law) and such claim has not yet been properly resolved should submit a new claim under the new Law. However, if they do not do so, then such previous claim shall constitute a valid claim under the new Law. If such a previously submitted claim does not meet the requirements of the new Law, then the applicant shall be requested to submit the additional information as prescribed by the new Law.

V. COMPLAINTS

53. The applicant complains of violations of his rights protected under Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

54. In its general observations of 24 March 1999, the respondent Party submitted that the Chamber was not competent to decide upon the application. It stated that the application is, in essence, a request for the return of real property into his possession. Such a claim should be decided by the CRPC or the competent organ in the Republika Srpska under the Law on Cessation of Application of the Law on Use of Abandoned Property. The respondent Party further claimed that the applicant had not exhausted the domestic remedies available to him and that accordingly the Chamber should refuse to accept his application in accordance with Article VIII(2)(a) of the Agreement.

55. In its submissions of 17 May 2000 and 29 June 2001, the respondent Party informed the Chamber that the applicant had been reinstated into possession of his property. However, thereafter, on 23 January 2003, the respondent Party corrected its previous submission and stated that the applicant was only reinstated into possession of his property on 18 November 2002. The respondent Party explained that it had previously received incorrect information from the Ministry.

B. The applicant

56. The applicant maintains his complaints. In addition, he stated that he has exhausted all the domestic remedies available to him. He denied that the application should be decided solely by the CRPC. He claimed that he was unable to realise his right to repossession of his property for a long time due to the inaction of the authorities of the Republika Srpska. The applicant confirmed that he was finally reinstated into possession of all his property on 18 November 2002; none the less, he maintains his compensation claim.

VII. OPINION OF THE CHAMBER

A. Admissibility

57. 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. Requirement to exhaust effective domestic remedies

58. The respondent Party contends that the case should be declared inadmissible because the applicant failed to exhaust effective domestic remedies (see paragraph 54 above).

59. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ...."

60. The Chamber notes that on 20 August 1998 the applicant unsuccessfully applied to the relevant organ under the old Law to regain possession of his property. Accordingly, he sought, for a long period of time, to avail himself of this remedy.

61. In *Onić v. the Federation of Bosnia and Herzegovina* (case no. CH/97/58, decision on admissibility and merits of 12 February 1999, paragraph 38, Decisions January—July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. ... [M]oreover, ... in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

62. The Chamber, further, notes that on 25 January 1999, the applicant applied under the new Law to regain possession of his property. He received a procedural decision of 28 March 1999 from the Ministry entitling him to regain possession over his property. However, the time limits for such repossession were not adhered to. Although the applicant was in possession of an enforceable procedural decision, he was not in a position to regain his property within a reasonable time, and he did not in fact regain such property until 18 November 2002.

63. In these circumstances, the Chamber finds that the applicant could not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy in this context provided for in the domestic law. The Chamber therefore rejects this ground for declaring the application inadmissible.

2. Possibility of submission to the CRPC

64. The respondent Party also claims that the application should be declared inadmissible as the applicant has not applied to the CRPC seeking a decision on his request for the return of his property (see paragraph 54 above).

65. According to Article VIII(2)(d) of the Agreement:

> "the Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

66. Article XI of Annex 7 to the General Framework Agreement for Peace sets out the mandate of the CRPC. It reads as follows:

> "The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return."

67. As the Chamber held in *Pletilić and Others v. the Republika Srpska* (case nos. CH/98/659 *et. al.*, decision on admissibility and merits of 9 July 1999, Decisions August—December 1999),

"the above provision establishes a mechanism under which persons may be declared to be the lawful owners of real property and authorised to regain possession of that property. It is therefore an integral and extremely important part of the mechanism established by the General Framework Agreement for Peace for the return of refugees and displaced persons to their properties."

68. Article VIII(2)(d) of the Agreement enables the Chamber to declare an application inadmissible if the same matter is already pending before the CRPC. However, in the present case, the applicant did not apply to the CRPC, but instead, chose to apply to the Chamber. Therefore, Article VIII(2)(d) is inapplicable in the present case and the application is not inadmissible under that provision.

3. Conclusion as to admissibility

69. The Chamber finds that none of the grounds for declaring the case inadmissible has been established. Accordingly, the Chamber declares the application admissible with respect to Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention as well as to discrimination in the enjoyment of the mentioned rights.

B. Merits

70. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party 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 8 of the Convention

71. In his application to the Chamber, the applicant claimed to be the victim of a violation of Article 8 of the Convention, which reads, insofar as relevant, as follows:

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

72. The respondent Party did not submit any observations under this provision.

73. The Chamber notes that the applicant had lived in the house situated on his property and used it as his home until such time as he was forced to leave. The Chamber has previously held that links that persons in similar situations retained to their dwellings were sufficient for those dwellings to be considered to be their "homes", within the meaning of Article 8 of the Convention (*see, e.g.*, aforementioned *Onić* decision, paragraph 48; case no. CH/97/46, *Kevešević*, decision on the merits of 10 September 1998, paragraphs 39-42, Decisions and Reports 1998). In addition, the respondent Party did not contest that the property may be considered the applicant's home. Therefore, the property may be considered as the applicant's "home" for the purposes of Article 8 of the Convention.

74. The Chamber notes that the applicant was forced to leave his home due to fear for his safety resulting from the hostilities. The property was then occupied by refugees and displaced persons of Serb origin. These persons occupied the property concerned in accordance with decisions of the Commission for Refugee Accommodation and Management of Abandoned Property issued in accordance with the old Law. Therefore, the respondent Party was responsible for the interference with the rights of the applicant to respect for his home prior to his repossession of it on 18 November 2002.

75. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim, and was "necessary in a democratic society" (see *Onić* decision at paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

76. The property was considered to be abandoned in accordance with the old Law (see paragraph 32 above). Moreover, the applicant tried to regain possession of his property in accordance with Articles 39 and 42 of the old Law. This old Law sought to provide for a regime for the administration of abandoned property in the Republika Srpska. The property was allocated to temporary occupants by the Ministry.

77. The Chamber must decide whether the old Law can be considered to be a "law" in the context of Article 8(2) of the Convention. The Chamber has previously held that the term "law" is related to certain qualitative criteria of a norm, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (see *Kevešević d*ecision at paragraph 52). In the above-mentioned *Kevešević* case, the Chamber held that the concept of the rule of law contains the following three elements: firstly, the law must be adequately accessible: a citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee with reasonable certainty the consequences of his actions. Thirdly, a law must provide safeguards against abuse.

78. The Chamber notes that the procedure for regaining possession was set forth in Articles 39-42 of the old Law (see paragraphs 35-37above). In *Esfak Pletilić and Others v. the Republika Sprka*, the Chamber found that "the precise effect of these Articles is unclear" (case no. CH/98/659 *et al*., decision on admissibility and merits of 9 July 1999, paragraph 173, Decisions August— December 1999). The Chamber noticed that, "Article 39 allows for the regaining of possession of property within the context of an overall settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia. The Article does not specify what the terms of any such settlement are to be and gives no guidance as to what, if any, procedures are to be followed prior to the conclusion of any such settlement. Further, Article 40 is drafted in such a way as to render it practically impossible for an owner of property who is a refugee or internally displaced person to secure possession of it under the Law. Article 42 of the old Law states that Articles 37-41 are to be applied on the basis of reciprocity, without any explanation of how this is to be applied in practical terms. It is accordingly clear that the old Law did not enable a person seeking to regain possession of his or her property to establish what actions he or she must take to do so. The law also did not provide any safeguards against possible abuse, but was in itself a source of arbitrariness and abuse" (*id*.).

79. In conclusion, in the *Pletilić* case the Chamber found that "the legal provisions in question did not meet the standards required of a "law" under Article 8(2) of the Convention. This is in itself sufficient for there to be a finding that there has been a violation on these grounds of the applicant's rights as guaranteed by that provision" (*id.* at paragraph 174). The same conclusion applies to the present case.

80. The Chamber notes that the new Law has been adopted in order to remedy the violations caused by the old Law. The Chamber further notes that, although the authorised Ministry decided upon the applicant's request for repossession, it failed, for a long period of time, to enforce its procedural decision in order to in fact reinstate the applicant into possession of his property.

81. The Chamber recalls that Article 10 of the new Law provides that proceedings concerning the return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Procedure (see paragraph 48 above) and be treated in an expedited procedure. It is clear that the Ministry did not comply with the above-mentioned provision since the applicant's repossession to all his property did not occur until 18 November 2002, although he submitted his request for enforcement of the procedural decision of 28 March 1999 on 31 July 2000. Thus, there was a two and one half-year year delay in following through on what should have been an expedited request. Such interference by the respondent Party was not in accordance with the new Law.

82. Further, the Chamber notes that the respondent Party twice wrongly informed the Chamber about the applicant's alleged repossession of his property (see paragraph 10 above). In so doing, the respondent Party likely delayed the applicant's reinstatement into possession of all his property and prevented the Chamber from earlier deciding upon this case along with other Gradiška property cases (*e.g.*, case nos. CH/98/659 *et al.*, *Esfak Pletilić and Others*, decision on admissibility and merits of 9 July 1999, Decisions August— December 1999). While the Chamber accepts that the respondent Party's submission of this incorrect information was made in good faith, none the less, the Chamber cannot ignore that it further infringed upon the applicant's rights and aggravated the interference with his right to home, as protected by Article 8 of the Convention.

83. Taking into account that the interference with the applicant's right to his home prior to 18 November 2002 was not in accordance with the law, there is no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

84. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the right of the applicant to respect for his home as guaranteed by Article 8 of the Convention.

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

85. The applicant complains that his right to peaceful enjoyment of his possessions has been violated as a result of his inability to regain possession of all his property within a reasonable time. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> "The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

86. The Chamber finds that the property concerned, which was owned or co-owned by the applicant, constitutes his "possession", within the meaning of Article 1 of Protocol No. 1 to the Convention.

87. The Chamber considers that the allocation of the applicant's property to third parties for their use constituted an "interference" with the applicant's right to peaceful enjoyment of his possessions. The Chamber notes that this interference came to an end on 18 November 2002, when the applicant finally entered into possession of all his property.

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

89. The Chamber has already found that the old Law does not meet the standards of a "law" in a democratic society (see paragraphs 77-79 above). This is, in itself, sufficient to warrant a finding that there has also been a violation of Article 1 of Protocol No. 1 to the Convention.

90. The Chamber again notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, the Chamber further notes that the applicant received an enforceable procedural decision of 28 March 1999 entitling him to regain possession of his property (see paragraph 20 above). The Chamber has previously held that "the positive obligations of the Parties to provide effective protection for the rights of an individual includes the enforcement of court decisions" (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). This principle can be applied, *mutatis mutandis*, in the present case. The unnecessary delay of enforcement of the decision of 28 March

1999 lasted for two and one half years after the applicant submitted his request for enforcement on 31 July 2000. This delay was caused by the respondent Party's hesitation to take adequate steps to enforce the procedural decision of 28 March 1999 and by its reliance on incorrect information that the applicant had repossessed all his property. Accordingly, this delay constitutes a failure by the respondent Party effectively to secure the applicant's right to peaceful enjoyment of his possessions.

91. In conclusion, the Chamber finds that there has been a violation of the rights of the applicant to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

92. The applicant did not specifically claim that his right protected by Article 6 of the Convention had been violated. However, in view of the fact that he complained of the conduct of the proceedings he had initiated before the domestic organs, the Chamber raised this issue *proprio motu* when it transmitted the application to the respondent Party for its observations on admissibility and merits (see paragraph 5 above).

93. Article 6 paragraph 1 of the Convention reads, in pertinent 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 …."

94. The respondent Party did not submit any observations under this provision.

95. The Chamber recalls that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (*see, e.g.*, Eur. Court HR, *Langborger v. Sweden,* judgment of 22 June 1989, Series A no. 71, page 12, paragraph 23). The Chamber has held that one of the guarantees provided by Article 6 of the Convention is the right to a fair hearing within a reasonable time (case no. CH/97/54 *Mitrović*, decision on admissibility of 10 June 1997, paragraph 10, Decisions and Reports 1998).

96. The European Court of Human Rights has held that Article 6 applies to enforcement proceedings, regard being had to the purpose of initiating proceedings, namely to settle disputes. The Court has held that the enforcement proceedings constitute a second stage, which should be considered under Article 6 paragraph 1 (Eur. Court HR, *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143; *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286 A). The Chamber has also previously held that Article 6 applies to enforcement proceedings (*see, e.g.*, case no. 98/603, *R.T.*, decision on admissibility and merits of 4 November 2002, Decisions July— December 2002). Moreover, in the *Scollo* case the Court found that prolonged delay in the enforcement of a judgment entitling the applicant to possession of an apartment had involved a breach of Article 6 of the Convention, because the inertia of the competent administrative authorities engaged the responsibility of the State (Eur. Court HR, *Scollo v. Italy*, judgment of 29 September 1995, Series A no. 315C, paragraphs 44 -45). Consequently, Article 6 paragraph 1 of the Convention is applicable to the entire length of the proceedings, including the enforcement proceedings.

97. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The Chamber recalls that the applicant initiated proceedings for repossession of his property before the competent administrative authorities on 20 August 1998 (under the old Law) and on 25 January 1999 (under the new Law). He requested enforcement of the procedural decision issued in his favour by the administrative authorities on 31 July 2000. Further, in 1998 the applicant initiated proceedings before the First Instance Court in Gradiška requesting repossession of his property. The first instance proceedings were completed on 11 April 2001 (*i.e.*, after 3 years). None the less, it was not until 18 November 2002 that the applicant finally regained possession over his property through the administrative proceedings before the Ministry (*i.e.*, 4 years and two months after he first requested repossession and 2 years and 4 months after he requested enforcement of the decision in his favour).

98. When assessing the reasonableness of the length of proceedings, for the purposes of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case, the conduct of the applicant and the authorities, and the matter at stake for the applicant (*see, e.g.*, case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 12, Decisions and Reports 1998).

99. The issue in the applicant's case was whether he was entitled to repossession of his pre-war property. The Chamber cannot find that this is a particularly complicated issue, particularly in light of the fact that the applicant has documentation showing that he is the owner of the property and the fact that the administrative body, and thereafter the court, both concluded that he was entitled to possession. Nor can it be argued that the law is particularly complicated on this point. Once the issue concerning the applicant's property right was decided, it was merely a matter of enforcing the decision. The time limits within which to enforce such decisions are clear in the applicable law (see paragraph 49 above).

100. The new Law clearly sets forth that a rightful owner has the right to repossession of his home within at most 90 days, barring extreme circumstances, none of which appear in this case. Accordingly, the delay in the enforcement proceedings must be imputed to the respondent Party.

101. The Chamber has previously noted that a person who has lost his home has an important personal interest in the speedy outcome of the dispute and in securing a final and binding decision that will, in fact, provide him with the relief that he seeks (case no. CH/00/3546, *Tuzlić,* decision on admissibility and merits of 13 January 2001, Decisions January-June 2001).

102. The question in the present case is whether the particular difficulties associated with enforcing the applicant's right to repossession of his property are attributable to the applicant or to the authorities of the respondent Party. In this regard, the Chamber recalls that the authorities have the duty to organise their judicial system in such a way as to meet each of the requirements in Article 6 paragraph 1 (Eur. Court HR, *Garyfallou AEBE v. Greece*, judgment of 24 September 1997, Reports of Judgments and Decisions 1997-V, page 1821). Moreover, the Chamber takes particular notice of the fact that for at least two years the respondent Party relied upon incorrect information that the applicant had previously been reinstated into possession of his property. Although this mistake appears to have been made in good faith, it still must be imputed to the respondent Party, the result being that the conduct of the relevant authorities unnecessarily prolonged the proceedings in the applicant's case.

103. The Chamber therefore finds that the respondent Party violated the right of the applicant protected by Article 6 paragraph 1 of the Convention to a fair hearing within a reasonable time in the determination of a civil right.

4. Article 13 of the Convention

104. The applicant alleges that his right protected under Article 13 of the Convention was violated.

105. Article 13 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."

106. Taking into consideration its conclusion that the respondent Party 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.

5. The complaint of discrimination

107. In the light of its findings of a violation of Articles 6 and 8, and of Article 1 of Protocol No. 1 to the Convention, the Chamber does not consider it necessary to examine the applicant's complaint of discrimination in the enjoyment of the above rights under Article II(2)(b) of the Agreement.

VIII. REMEDIES

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

109. On 20 April 1999, the applicant submitted a claim for compensation for mental suffering allegedly caused to him and to members of his family as a result of his inability to regain possession of his property. The applicant requested 2,500 Convertible Marks (*Konvertibilnih Maraka* "KM") per each household member, in the total amount of 5,000 KM. He also requested compensation for the rent he paid for accommodation prior to his return to his property in the amount of 100 KM per month for nine months (it appears that the applicant moved into his son's house and thereafter incurred no further rental expenses), in the total amount of 900 KM. Lastly, he claimed 700 KM for miscellaneous expenses. Although he confirmed that he finally repossessed all his property on 18 November 2002, in his submission of 3 February 2003, the applicant stated that he maintains his claim for compensation.

110. In its general observations of 22 June 1999, the respondent Party argued that the claim for compensation is ill-founded and inadmissible. It stated that in accordance with Article VIII of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, the respondent Party was entitled to accommodate refugees and displaced persons in abandoned property, pending resolution of the ownership and possession of that abandoned property by the CRPC. Since the applicant had not applied to the CRPC, the respondent Party maintained that it acted in accordance with its duties. Furthermore, the respondent Party opined that the applicant contributed to his present situation by moving from the place where he had been temporary accommodated.

111. As the Chamber considered in *Esfak Pletilić and Others,* the compensation claim submitted by the applicant can not be rejected on the grounds suggested by the respondent Party, as it has not accepted analogous arguments relating to the admissibility of the application. As the two arguments are inextricably linked, the fact that the Chamber has not accepted them in relation to the admissibility of the application precludes the Chamber from accepting them in relation to the claim for compensation.

112. Taking into consideration the established violations of the applicant's human rights, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to regain possession of his property within a reasonable time. The Chamber does not consider it appropriate, however, to award such sums to members of the applicant's family; it can only award compensation to the applicant. The Chamber will order the respondent Party to pay to the applicant the sum of 1,800 KM as compensation for non-pecuniary damage.

113. In accordance with its decision in *Pletilić and Others* (case no. CH/98/659 *et al.*, decision on admissibility and merits of 9 July 1999, paragraph 238, Decisions August— December 1999), the Chamber considers that the sum of 100 KM is appropriate to compensate for the loss of use of the property for each month he did not use it. The Chamber considers it appropriate that this sum should be payable starting two months after the end of the month in which he lodged his first application to the Ministry to regain possession of his property under the old Law, *i.e.* 1 November 1998, until the date he regained possession of his property on 18 November 2002, in the total amount of 4900 KM.

114. The Chamber will dismiss the remainder of the applicant's claims for compensation as they have not been substantiated.

115. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in paragraphs 112-113 above. Interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sums awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

116. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible with respect to Articles 6, 8, and 13 of the European Convention on Human Rights, Article 1 of Protocol No. 1 to the European Convention on Human Rights and in relation to the complaint of discrimination in the enjoyment of the mentioned rights;

2. unanimously, that there has been a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that there has been a violation of the right of the applicant to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the applicant's inability to achieve enforcement of a final, binding and enforceable administrative decision constitutes a violation of his right to a fair hearing within a reasonable time, within the meaning of Article 6 paragraph 1 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary to examine the application under Article 13 of the Convention and in relation to the complaint of discrimination;

6. by 6 votes to 1, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,800 Convertible Marks by way of compensation for non-pecuniary damages;

7. by 6 votes to 1, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 4,900 Convertible Marks by way of compensation for pecuniary damages for the loss of use of his property;

8. unanimously, to dismiss the remainder of the applicant's claims for compensation;

9. unanimously, to order the Republika Srpska to pay to the applicant simple interest at an annual rate of 10% as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sums awarded or any unpaid portion thereof until the date of settlement in full; and

10. unanimously, to order the Republika Srpska to report to it by 11 June 2003 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michele PICARD
President of the First Panel