# DECISION ON ADMISSIBILITY AND MERITS
**(delivered on 9 May 2003)**

**Case no. CH/02/12226**

**Ibrahim HAZIRAJ and Ašida HAZIRAJ-FEJZIĆ**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 1 April 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina ("the General Framework Agreement");

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

## I. INTRODUCTION

1. The applicants are a married couple, citizens of Bosnia and Herzegovina of Albanian and Bosniak origin. They are co-owners of their private house in the Municipality Pale, the Republika Srpska. The case concerns the applicants' attempts to regain possession of their house. The applicants have lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), which has issued decisions confirming their property rights. The relevant facts of the case are set out in Section III below.

2. The case raises issues of discrimination in relation to Articles 6, 8 and 13 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention. The application also raises issues in relation to the aforementioned Convention provisions in isolation.

## II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 10 September 2002 and registered on the same day. The applicants requested the Chamber to issue an order for a provisional measure ordering the respondent Party to immediately reinstate them into possession of their house.

4. On 8 October 2002 the Chamber decided to refuse the request for a provisional measure and to transmit the case to the respondent Party.

5. On 18 November 2002 the respondent Party sent its observation on admissibility and merits.

6. On 10 December 2002 the applicants sent their observations in reply to the respondent Party's observations. On 16 January 2003 the Chamber received additional observations from the applicants.

7. The Chamber deliberated on the case on 8 October 2002, on 6 March 2003 and on 1 April 2003. It adopted the present decision on the latter date.

## III. FACTS

8. The applicants are citizens of Bosnia and Herzegovina who currently live in Sarajevo as displaced persons.

9. Mr. Ibrahim Haziraj is of Albanian origin and his wife Mrs. Ašida Haziraj-Fejzić is of Bosniak origin.

10. Before the armed conflict, the applicants lived in Pale, the Republika Srpska, as owners of their three-floor private house, built in the center of Pale in 1984. At the beginning of the armed conflict, they were expelled from Pale because of their ethnic origin.

11. On 3 April 1998 the CRPC issued two decisions (nos. 203-1183-1/1 and 203-1183-1/2), establishing that the applicants were *bona fide* co-possessors of their house on 1 April 1992.

12. On 19 October 1998 the applicants requested enforcement of the CRPC decisions before the Republika Srpska Ministry for Refuges and Displaced Persons – Department Pale ("OMI").

13. On 1 February 2000 the applicants were evicted from their temporary accommodation, an apartment located at Tuzlanska čikma no. 3 in Sarajevo.

14. On 13 March 2000 the OMI Pale issued a procedural decision allowing the applicants to be reinstated into possession of a part (the ground floor) of their house. The right to alternative accommodation was recognised for the temporary occupants of their house, the family of Mr. T.G., who is of Serb origin.

15. On 28 September 2000 Mr. T.G. was reinstated into possession of his pre-war apartment located in Sarajevo.

16. On 23 October 2000 the OMI Pale notified the applicants that they could take the keys of an apartment in their house which was allegedly sealed. In the OMI premises the applicant Mr. Haziraj took the keys and signed a record of that.

17. When the applicants tried to enter into their house they were very rudely prevented from doing so by the temporary occupants. Mr. T.G. threatened to kill Mr. Haziraj with an axe if he tried to enter the house. The applicants requested the local police to protect them, but the police refused to do so, because they did not have an official order for the police to intervene. An official note of 9 July 2002, made in the Police station in Pale, was sent to the Chamber by the respondent Party.

18. On 26 July 2002 the applicants submitted to the OMI Pale their request for enforcement of the procedural decision of 13 March 2000, requesting their reinstatement. They did not receive any response.

19. On 27 August 2002 the applicants informed the Minister for Refugees and Displaced Persons in Banja Luka about their case, asking him to solve their case. Nothing has happened.

20. The applicants contacted the OMI Pale on several occasions by oral requests. They were told by the head of the department that their case was solved, and that he would not consider their additional requests.

21. On 24 September 2002 the applicants were evicted, as temporary occupants, from an apartment located at Salke Lagumdžije 5 in Sarajevo.

22. On 10 October 2002 the applicants repeated their request of 26 July 2002 to the OMI Pale.

23. On 7 November 2002 the applicants asked for urgency in their case before the OMI Pale.

24. On 12 December 2002 the applicants submitted an appeal because of silence of administration to the Ministry for Refuges and Displaced Persons in Banja Luka.

25. On 16 December 2002 the applicants sent a letter to the current occupants requesting them to leave their house in order to peacefully solve the case. They also wrote that the letter should be considered a warning before the initiation of court proceedings.

26. On 27 December 2002 the applicants submitted a court action before the Basic Court in Sokolac, relying on their ownership (certificates from the Land Registry), on the procedural decision of 13 March 2000, and on the fact that the illegal occupants have never left the house. They requested the Court to oblige the defendants (Messrs. T.G. and R.G.) to leave the house.

## IV. RELEVANT LEGAL PROVISIONS

### A. The General Framework Agreement – Annex 7, Agreement on Refugees and Displaced Persons

27. The General Framework Agreement was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia in Paris on 14 December 1995. Annex 7 to the General Framework Agreement deals with refugees and displaced persons, and in accordance with Article VII of Annex 7, an independent Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was established.

28. The CRPC 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 1 April 1992, and where the claimant does not enjoy possession of that property (Article XI). The CRPC shall determine the lawful owner of the property - a concept which the CRPC has construed to include an occupancy right holder - according to Article XII(1). According to Article XII(7), the decisions of CRPC are final, and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina.

29. The Parties to the General Framework Agreement shall co-operate with the work of the CRPC, and shall respect and implement its decisions expeditiously and in good faith (Article VIII).

### B. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees

30. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "Law on Implementation") (Official Gazette of the Republika Srpska nos. 31/99, 2/00, 39/00, 65/01 and 13/02) was imposed as a law of the Republika Srpska by a decision of the High Representative in Bosnia and Herzegovina on 27 October 1999. It sets out a regime for the enforcement of decisions of the CRPC.

31. The responsible body of the Ministry of Refugees and Displaced Persons in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens, or relating to apartments for which there is an occupancy right, upon a request for enforcement (Article 3 paragraph 2). The CRPC decisions shall be enforced if a request for the enforcement has been filed to the relevant organ. The following persons are entitled to file such a request: The right holder specified in the CRPC decision and his/her heirs relating to real property owned by citizens (Article 4 paragraph 1).

32. The right to file a request for enforcement of a CRPC decision confirming a right to private property is not subject to any statute of limitation (Article 5 paragraph 1).

33. The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement, within a period of 30 days from the date when the request for enforcement was submitted and shall not require any confirmation of the enforceability of the decision from CRPC or any other body (Article 7 paragraphs 1 and 2). The conclusion shall contain:

1. a decision on repossession of the property or apartment by the right holder or other requestor for enforcement;
2. a decision terminating the right of the temporary user (where there is one) to use the property or apartment;
3. a time limit for the enforcee to vacate the property;
4. a decision on whether the enforcee is entitled to accommodation in accordance with applicable laws;
5. a requirement that the premises shall be vacated of all persons and possessions, other than those belonging to the person authorised to return into possession.

34. According to Article 7 paragraph 5, the time limit for vacating the property shall be the minimum time limit applicable under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. No extension of this time limit shall be permitted.

35. Article 9 states that a decision of the CRPC is enforceable against the current occupant of the property concerned, regardless of the basis on which he occupies it.

36. Article 12a reads as follows:

> "The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days to prove that the right holder named in the Commission's

decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the disposition of the Commission's decision.

"The competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative body pending the court's decision where the appellant can show evidence of a written contract on the transfer of rights in accordance with domestic law and irreparable damage to the enforcee if the enforcement proceedings continued."

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

37. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of the Republika Srpska entered into force on 19 December 1998 (Official Gazette of the Republika Srpska nos. 38/98, 12/99, 31/99 and 65/01).

Article 11a states in relevant part:

"In case the current user fulfils the criteria set out in paragraph 1.2 of this Article, the deadline for vacating the apartment shall be not more than 90 days from the date of the delivery of the decision. If a temporary user ceases to fulfil the conditions in this paragraph and a decision setting out a 90-day deadline to vacate has already been issued, then the competent authority *ex officio* shall immediately issue a new decision specifying a deadline to vacate 15 days from the date of its delivery and then a conclusion on enforcement.

"In exceptional circumstances, the deadline referred to above may be extended by up to one year if the body responsible for providing another accommodation in accordance with this Law provides detailed documentation regarding the lack of available accommodation to the Ministry of Refugees and Displaced Persons, which shall be agreed upon by the Office of the High Representative. In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the owner, possessor or user shall be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

"The current user shall be required to demonstrate that s/he meets the conditions for entitlement to alternative accommodation under this Law; including providing claim or decision numbers for the repossession of the current user's 1991 home. If the current user cannot demonstrate that s/he meets these conditions, the competent authority shall proceed in accordance with the Law on General Administrative Procedures in order to determine relevant facts."

### D. The Law on General Administrative Proceedings

38. The Law on General Administrative Proceedings (Official Gazette of the Republika Srpska no. 13/02) governs administrative proceedings. Under Article 262 of the Law, the competent administrative organ shall issue a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. Article 206 paragraph 2 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against the "silence of the administration").

### E. The Law on Administrative Disputes

39. Article 1 of the Law on Administrative Disputes (Official Gazette of the Republika Srpska no. 12/94) provides that the courts shall decide in administrative disputes on the lawfulness of administrative acts concerning rights and obligations of citizens and legal persons.

40. Article 25 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

### F. The Law on Basic Property-Legal Relations

41. The Law on Basic Property-Legal Relations in the Republika Srpska (Official Gazette of the SFRY no. 6/80), which was taken over as a law of the Republika Srpska, in its Article 37 provides for an action *rei vindicatio.*

42. Article 37 reads as follows:

> "An owner may request from the possessor the return of specific property by an action.
>
> "The owner must prove that he has a property right as to the property the return of which he claims, as well as that the property is under the factual control of the defendant.
>
> "The right to file an action under paragraph 1 of this Article is not barred by a statute of limitation."

## V. COMPLAINTS

43. The applicants claim that their rights as guaranteed by Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention have been violated.

44. The applicants allege that their property rights have been violated, as well as their rights to home and family life. They state that they have been discriminated against because of their very unpopular ethnic origin in Pale (Albanian and Bosniak). The family of Mr. T.G. continued to dwell in the whole house, although Mr. T.G. regained his apartment in Sarajevo. The temporary occupants phoned the applicants threatening them that they would burn the house if the applicants continue to request repossession. The applicants added that they are not employed, and that they were evicted from temporary accommodations in Sarajevo. Their daughter, a journalist for Radio Free Europe, tried to contact the Minister for Refugees, but nothing happened. The applicants conclude that the authorities in Pale wilfully obstruct their reinstatement.

## VI. SUBMISSIONS OF THE PARTIES

### A. The respondent Party

45. In relation to the facts as presented by the applicants, the respondent Party makes some objections. It states that in the case file there was a record on reinstatement into possession of the house of 23 October 2000, according to which the applicant Mr. Haziraj was given the keys of the house. The applicant did not make any objection at that moment. Having examined the minutes of the Police station in Pale of 9 July 2002, the respondent Party concluded that the applicant went to the station, complaining of non-reinstatement but not about a "threat by an axe".

46. Regarding admissibility, the respondent Party proposes to the Chamber to declare the case inadmissible. The respondent Party states that the current occupants' statement that there is a contractual relationship between them and the applicants is well-founded. The respondent Party concludes that if there is a disputed agreement between them, the applicants could initiate court proceedings by a court action – *rei vindicatio.*

47. Regarding the merits, the respondent Party states that there are no violations of Articles 6, 8, 13, and 14 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention. According to the respondent Party, Article 6 is not applicable because this is not a case about "establishment of civil rights and obligations" but a case about private relations. Concerning Articles 8 and 1 of Protocol No. 1, the respondent Party emphasises that its authorities did not violate the applicants' rights to peaceful enjoyment of their property. Concerning discrimination, the respondent Party states that the allegations about discrimination are not substantiated.

48. The respondent Party enclosed the official note of 9 July 2002 made in the Police station in Pale. According to the note, the applicant Mr. Haziraj went to the station complaining that the current occupants prevented him from entering into his house. Policemen visited the house, where they found Mr. T.G., who stated that the house had never been sealed and that he and his family had never been evicted. The current occupant stated also that there was an agreement between him and the applicant according to which he would use the house and the applicant would use the Mr. T.G.'s apartment in Sarajevo. He added that after they made the agreement in the Ministry for Refugees' premises, the applicant went to the house requesting an additional 30,000 KM. Mr. T.G. refused that request, stating that he will initiate court proceedings. The policemen were also informed by the Ministry that the applicant allowed the current occupants to use his house. The policemen established that no eviction had ever occurred. The applicant was instructed in the station to repeat his request for eviction or to initiate court proceedings.

### B. The applicants

49. The applicants maintain their complaints and claims that the remedies available to them are ineffective.

50. The applicants state that the temporary users have never been evicted from their house. They have never planned to leave the house. The temporary occupant Mr. T. G. submitted (double) keys of the house to the OMI in order to obtain minutes about it and to repossess his apartment in Sarajevo. Mr. T.G. repossessed his apartment in Sarajevo on 28 September 2000.

51. The applicants were evicted from two apartments in Sarajevo (located at Salke Lagumdžije 5 and Tuzlanska čikma 3). They state that their current social situation is very bad. Now they are subtenants and pay rent for their accommodation.

52. The applicants further state that no agreement exists between them and the current occupants. They had oral negotiations, but they did not make any written arrangement. On 2 July 1992, when the applicants had to leave Pale, they made a written contract with Mr. T.G., according to which they would stay in each other's properties and take care of them until the war ceased. They have never entered Mr. T.G.'s apartment in Sarajevo. The applicants add that Mr. T.G. alleges some agreements only in order to keep the house and to use it free of cost. The applicants add that Mr. T.G. is an overly aggressive man and that nobody in Pale wants to be in conflict with him. In their additional observations, the applicants emphasise that initiating court proceedings in Sokolac is a big risk and poses additional difficulties for them, because they have no money for a lawyer and they have to go to court in person.

## VII. OPINION OF THE CHAMBER

### A. Admissibility

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

54. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997, with further references), the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system

of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

55. In the present case, the respondent Party objects to the admissibility of the application on the ground that the Law on Basic Property-Legal Relations provides for an action, the *rei vindicatio*, which the applicants have not exhausted. By this action the applicants could obtain a judgment that establishes that there is no agreement that entitles Mr. T.G. and his family to continue to occupy their house and that on this basis orders Mr. T.G. and his family to hand over the house to the applicants.

56. The Chamber notes, however, that the applicants filed requests to the CRPC with a view to being reinstated into the house. On 3 April 1998 the CRPC issued two decisions confirming the applicants' ownership rights, from which it follows that the applicants are entitled to seek the removal of the temporary occupants from the house. The applicants have requested the competent administrative organ to enforce these decisions and therefore should be reinstated into possession of their house in accordance with the Law on Implementation, which is *lex specialis* in this respect. The OMI Pale issued a procedural decision allowing the applicants to be reinstated on 13 March 2000, *i.e.* 15 months later. According to Article 12a of the Law on Implementation, it is for Mr. T.G. and his family to initiate court proceedings in order to establish the existence of a valid agreement between the applicants (as holders of the CRPC decisions) and Mr. T.G. and his family (as occupants of the property). In these proceedings Mr. T.G. and his family could request a provisional measure to suspend their eviction.

57. The applicants are thus, under the laws of the Republika Srpska, entitled to repossess the house without exercising the remedy suggested by the respondent Party, which would constitute an entirely unnecessary procedural detour. In these circumstances the Chamber is satisfied that the applicants could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law.

58. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible in its entirety.

**B. Merits**

59. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts found 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

60. Under Article II of the Agreement, the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix (including the Convention), where such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities or any individual acting under the authority of such an official or organ.

61. The Chamber has considered the present case under Article II(2)(b) of the Agreement in relation to Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Chamber has further considered the case under Article II(2)(a) of the Agreement in relation to the said provisions of the Convention in isolation.

62. The Chamber has repeatedly held (see, *e.g.*, case no. CH/97/45, *Hermas,* decision on admissibility and merits of 16 January 1998, paragraph 82, Decisions and Reports 1998; case no. CH/98/756, *Đ.M.*, decision on admissibility and merits of 13 April 1999, paragraph 68, Decisions January-July 1999; and case no. CH/97/67, *Zahirović*, decision on admissibility and merits of

10 June 1999, paragraph 115, Decisions January-July 1999) that the prohibition of discrimination is a central objective of the Agreement to which the Chamber must attach particular importance. It will therefore first consider whether the applicants were discriminated against.

### 1. Discrimination in the enjoyment of the applicants' right to respect for their home and to the peaceful enjoyment of their possession

63. Article 8 of the Convention provides, as far as relevant, as follows:

> "1. Everyone has the right to respect for his … family life, 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 … for the protection of the rights and freedoms of others."

64. 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."

65. The Chamber notes that the applicants are co-owners of their house in which they lived until they were forced to leave due to the armed conflict. In accordance with the constant jurisprudence of the Chamber (see, *e.g.*, case no. CH/98/777, *Pletilić,* decision on admissibility and merits of 9 September 1999, paragraph 74 and 88, Decisions August-December 1999 and case no. CH/98/457, *Anušić*, decision on admissibility and merits of 10 October 2000, paragraph 66 and 77, Decisions August-December 2000), these ownership rights are assets which constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, and the house of the applicants is to be considered their home within the meaning of Article 8 of the Convention.

66. The applicants allege that the policy of obstructing minority returns in the Municipality Pale constitutes discrimination, on the grounds of their ethnic origin, in the enjoyment of their rights to protection of their home and possession.

67. In examining whether there has been discrimination contrary to the Agreement, the Chamber has consistently found it necessary first to determine whether the applicants were treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification; that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin (see the above-mentioned *Zahirović* decision, paragraph 133 *et seq.*; *Hermas* decision, paragraphs 86 *et seq.*; *Đ.M.* decision, paragraph 92; and *Kevešević* decision, paragraph 92).

68. The Chamber recalls that the applicants' property rights over the house were confirmed by the CRPC already in 1998. Fifteen months passed between the applicants' request to enforce the CRPC decisions and the issuance by the OMI Pale of a procedural decision to this effect. This procedural decision has since then, in practice, remained without any consequences, because the public authorities of the respondent Party have not taken any steps to evict the occupants of the applicants' house.

69. In particular, the Chamber notes that the OMI Pale has neither carried out a real control of the house, nor sealed the apartment as it was established in the record signed by the applicants and

the OMI Pale official. After the applicants had informed the OMI Pale about their inability to enter into their house, an OMI Pale official stated that, insofar as he was concerned, the matter was closed and that he would not take any further steps. The municipality's authorities have tolerated this situation.

70. As a result the applicants, who are a couple of mixed Bosniak and Albanian origin, have been barred, for a long time, from returning to their home and property, which is occupied by an illegal occupant of Serb origin and his family. According to Mr. Haziraj, this person has threatened him with an axe and the applicant's report on this incident to the police has not resulted in any action on the side of the authorities. The Chamber sees the applicants' case in the light of the general political situation in the Pale Municipality, with its majority Serb population and a great number of displaced Serb families from Sarajevo among them, due to a massive inflow of Serb displaced persons from the Sarajevo area, as well as the ruling national Serb Democratic Party's politics. The Chamber finds that it is obvious that, due to their ethnic origin, the applicants have been differently treated than the others. The respondent Party has not suggested any justification for the differential treatment at issue as compared to persons of Serb origin, and the Chamber cannot, on its own motion, find any such justification. Accordingly, the failure to reinstate the applicants into possession of their pre-war home constitutes discrimination in the enjoyment of the right to respect for their home under Article 8 of the Convention, as well as in the right to peaceful enjoyment of their possession under Article 1 of Protocol No. 1 to the Convention.

71. The Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

### 2. Article 8 of the Convention

72. As the Chamber has already stated above (see paragraph 65 above), the applicants' house is to be considered as their home for the purposes of Article 8 of the Convention.

73. It is the respondent Party's assertion that enacted legislation enables the applicants to repossess their property and that therefore there has been no violation of Article 8 of the Convention.

74. In the present case, the Chamber finds that the passivity shown by the respondent Party's authorities in response to the applicants' various petitions aiming at enabling them to re-enter the house amounts to a lack of respect for their "home" within the meaning of Article 8(1) of the Convention. The respondent Party has made no attempt to justify this lack of respect. Nor can the Chamber find any such justification on its own motion. The Chamber therefore concludes that the applicants' rights under Article 8 of the Convention in isolation have also been violated.

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

75. The Chamber has already recognised (see paragraph 65 above) that the applicants' rights in respect of their house constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

76. The Chamber recalls that Article 1 of Protocol No. 1 contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations 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 applicant's fundamental rights (see, *e.g.*, the aforementioned *Blentić* decision, *loc. cit.*, paragraphs 31-32). Article 1 of Protocol No. 1 to the Convention may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights (see, *e.g.*, the aforementioned *Đ.M.* decision, *loc. cit.*, paragraph 95 and the case law of the European Court referred to therein). Such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction.

77. In the present case, the Chamber is concerned with a failure by the authorities to protect the applicants, for a period of 53 months (counting from 19 November 1998 when the OMI Pale was obliged to respond to the applicants' request of 19 October 1998), against a continuing unlawful occupation of their possession within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Chamber finds, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that this failure of the authorities to assist the applicants in recovering their property, during such an extended period of time, also amounts to a breach of their rights under Article 1 of Protocol No. 1 to the Convention in isolation.

### 4. Articles 6 and 13 of the Convention

78. Article 6 paragraph 1 of the Convention provides, as far as relevant, 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. …"

79. 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."

80. As explained above, the Chamber has found that the applicants have been discriminated against in the enjoyment of their rights protected under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Chamber has also found that the respondent Party violated the rights of the applicants protected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention in isolation. Considering these findings, the Chamber does not consider it necessary separately to examine the application under Articles 6 and 13 of the Convention.

## VIII. REMEDIES

81. 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 the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

82. In their application the applicants request that they be enabled to regain possession of their house. In addition, the applicants request KM 10,000 as compensation for mental suffering and compensation in the amount of KM 10,000 for the rent they have been forced to pay for their accommodation.

83. The respondent Party did not submit any observations on the applicants' claim for compensation.

84. Since the applicants in the present case have, for a long time, been unable to regain possession of their house due to the failure of the respondent Party to reinstate them in a timely manner, the Chamber finds it appropriate to exercise its powers granted under Article XI(1)(b) of the Agreement to order the respondent Party to reinstate the applicants without further delay, and at the latest within one month from the date on which the present decision is delivered, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement.

85. With regard to possible compensatory awards, the Chamber considers it appropriate to award a sum to the applicants in recognition of the sense of injustice they have suffered as a result of their inability to regain possession of their house, especially in view of discrimination and the fact that they have taken all necessary steps to have the CRPC decisions enforced and that the authorities of

the Republika Srpska were persistent in failing to deal with various other requests of the applicants aimed at regaining possession of the house.

86. Accordingly, the Chamber will order the respondent Party to pay to the applicants the sum of 5,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") as compensation for non-pecuniary damages in recognition of their suffering as a result of their inability to regain possession of their house in a timely manner and as a result of being subjected to unlawful discrimination.

87. In accordance with its decision in *Turundžić and Frančić* (case nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits of 5 February 2001, paragraph 70, Decisions January-June 2001), the Chamber considers it appropriate to order the respondent Party to compensate the applicants for the loss of use of their home. The Chamber considers that the sum of KM 10,000 is appropriate to compensate the applicants for the loss of use of the house and any extra costs for the period from 19 November 1998 up to and including May 2003. The Chamber further considers that the monthly sum of KM 200 is appropriate to compensate for the loss of use of the house and any extra costs for each month the applicants continue to be forced to live in alternative accommodation. This sum should be payable from June 2003 and continue to be paid until the end of the month in which the applicants regain possession of their house.

88. The Chamber will further award simple interest at an annual rate of 10 per cent on each of the sums awarded in paragraphs 86 and 87 or any unpaid portion thereof until the date of settlement in full.

## IX. CONCLUSIONS

89. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible in its entirety;

2. unanimously, that the applicants have been discriminated against in the enjoyment of their rights under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srpska thereby being in violation of Article I of the Human Rights Agreement;

3. unanimously, that the non-enforcement of the decisions of the CRPC constitutes a violation of the right of the applicants to respect for their home within the meaning of Article 8 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the non-enforcement of the decisions of the CRPC constitutes a violation of the right of the applicants to the peaceful enjoyment of their possession within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary to consider the complaints under Articles 6 and 13 of the European Convention on Human Rights in isolation;

6. unanimously, to order, in accordance with its powers granted under Article XI(1)(b) of the Agreement, the Republika Srpska to reinstate the applicants without further delay, and at the latest by 9 June 2003, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement;

7. unanimously, to order the Republika Srpska to pay to the applicants, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 5,000 by way of compensation for non-pecuniary damage;

8. unanimously, to order the Republika Srpska to pay to the applicants, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 10,000 as compensation for the loss of use of the house and for any extra costs from 19 November 1998 until 31 May 2003;

9. unanimously, to order the Republika Srpska to pay to the applicants KM 200 for each further month that they continue to be forced to live in alternative accommodation as from 1 June 2003 until the end of the month in which they are reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

10. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement in full;

11. unanimously, to dismiss the remainder of the applicants' claim for compensation; and

12. unanimously, to order the Republika Srpska to report to it within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel