DECISION ON ADMISSIBILITY AND MERITS

(delivered on 9 May 2003)

Case no. CH/98/640

S.J.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

Mr. 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;

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. This case concerns the applicant's attempts to establish ownership over an apartment which he purchased on 3 April 1992. The applicant purchased the apartment from Boris Čorev ("B.Č."), who had purchased the apartment from the former Yugoslav National Army ("JNA") on 24 February 1992.

2. The case raises issues under Articles 6, 8 and 13 of the European Convention on Human Rights ("the Convention"), as well as Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 11 May 1998 and registered on 25 May 1998. In his application, the applicant requested the Chamber to issue an order for provisional measures to prevent his eviction from the apartment in question.

4. On 11 June 1998, the Chamber considered the case. The Chamber decided to order the requested provisional measures not to evict the applicant and to transmit the application to the respondent Party for their observations on the admissibility and merits under Article 1 of Protocol No. 1 to the Convention and Articles 6, 8, and 13 of the Convention. The application was transmitted on 14 September 1998, although Article 8 of the Convention was inadvertently left out of the letter, and was consequently later transmitted to the respondent Party on 10 December 2002.

5. On 2 October 1998, the respondent Party requested an extension of the time limit for submission of written observations on the admissibility and merits. The Chamber decided not to grant the extension.

6. On 22 February 1999, the Chamber sent a letter to the applicant informing him that the respondent Party had not submitted any written observations on admissibility and merits in his case, and he was invited to submit any additional comments and a compensation claim, if he wished.

7. The respondent Party provided additional information on 23 August 2002, 16 September 2002, 4 November 2002, 8 November 2002 and 6 February 2003.

8. On 14 November 2002, the Chamber again invited the respondent Party to submit observations on the admissibility and merits of the case which the respondent Party did on 16 December 2002.

9. The applicant made additional submissions to the Chamber on 25 February 1999, 24 March 2000, 3 July 2001, 3 January 2003 and 13 January 2003.

10. The Chamber deliberated on the admissibility and merits of the application on 11 June 1998, 6 July 2000, 6 December 2002, 6 March 2003 and 1 April 2003, and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

11. The facts of the case as they appear from the submissions of the applicant and the respondent Party, are not specifically in dispute, unless otherwise stated, and may be summarised as follows.

12. Before the armed conflict the applicant lived in Kotor Varoš, the Republika Srpska, where he possessed an occupancy right over an apartment.

13. The applicant purchased an apartment located at Hamdije Čemerlića 6, apartment no. 8, in Sarajevo from B.Č. The contract submitted by the applicant shows that it was verified by the court in Kotor Varoš on 3 April 1992.

14. B.Č. had purchased the apartment from the former JNA on 24 February 1992. The contract on purchase was signed on 24 February 1992, and verified by the court on what appears to be 16 April 1992, although it is also evident from the document submitted to the Chamber that the original date was altered so that it would appear to read 16 March 1992.

15. The applicant states that due to the armed conflict, he moved abroad, although he does not provide any date.

16. During the armed conflict the apartment, which is located in Grbavica, was allegedly occupied by the armed forces of the Bosnian Serbs. A few days after the re-integration of Grbavica on 19 March 1996, the applicant re-entered the apartment, although he did not provide an exact date.

17. A few days after the applicant moved into the apartment, that is to say, at the end of March 1996, he alleges that he was visited by members of the RBiH Army Housing Fund, who examined the applicant's documents and informed him that he illegally occupied the apartment. At that time they also mentioned the possibility of his eviction.

18. On 24 September 1996, the RBiH Army declared the apartment permanently abandoned and terminated the occupancy right of B.Č.

19. The applicant initiated proceedings before the Municipal Court II ("the Court") in Sarajevo on 1 April 1996 to establish his ownership over the apartment.

20. On 23 June 1998, the Court issued a procedural decision specifying that the proceedings in the case were adjourned, in accordance with the Decree with the Force of Law on Amendments to the Law on Resources and Financing of the Army of the Republic of BiH of 10 February 1995, until the appropriate housing laws were established, as the apartment pertained to a purchase contract concluded under the Law on Securing Housing for the JNA. The proceedings were resumed on 4 September 1999 upon the request of the applicant's representative.

21. In the observations of 16 December 2002, the respondent Party included information which it had obtained from the Court, dated 20 December 1999, that the Court had requested a special representative *in absentia* to be appointed for B.Č. by the competent Centre for Social Welfare of the Municipality Novo Sarajevo, as the residence of the party B.Č. is unknown. The Centre for Social Welfare rejected the request and provided the Court with B.Č.'s address in The former Yugoslav Republic of Macedonia. No date is provided as to these allegations. The Federation alleges that the Court several times tried to send invitations to B.Č. through the Ministry of Justice, but without success. Additionally, the Court noted that on 14 December 1999, the Court held a hearing where Mr. Mušir Brkić, a lawyer from Sarajevo, declared that he was not the applicant S.J.'s representative, and the minutes noted that Mirsad Huseinbašić was designated as his representative, but without any address provided. Consequently, the hearing was cancelled for an indefinite period of time, and the applicant was requested to provide within three days the address of his appointed representative. The Federation did not provide any evidence to support these facts, and while the applicant did not specifically dispute any of the facts, he generally noted that he timely responded to all requests from the Court.

22. On 23 August 2002, the respondent Party forwarded additional information to the Chamber regarding the proceedings before the Court. According to the Court, the proceedings were halted as per the applicant's request of 2 March 2000, until the Chamber issues its decision in the case. The Court also noted that two hearings were scheduled for 3 April 2001 and 22 May 2001, which were then postponed for an indefinite period of time. The judge invited the applicant to change the lawsuit in the sense of stating correctly the name of the first accused, and submitting the address of his legal representative Mirsad Huseinbašić, after the representative Sakib Mataradžija cancelled his authorisation letter. Allegedly, the judge sent letters to the applicant with this request on 10 April 2002, 23 May 2002, and 10 July 2002. On 31 July 2002, the applicant responded and stated that

he maintained his lawsuit but he requested the court to suspend proceedings until the Chamber issues its decision in his case. Again, the respondent Party did not provide any documentation to support these facts, and while the applicant did not specifically dispute any of these facts, he states that he always responded to the Court's requests within the deadline.

23. On 16 September 2002, the respondent Party forwarded to the Chamber additional information regarding the case. Namely, the Military Attorney of the Federal Ministry of Defence on 26 August 2002, confirmed that, according to their records, the apartment in question is used by the applicant. The Ministry of Defence adds that due to the passive behavior of S.J., civil proceedings have been pending for over five years.

24. In the observations of 16 December 2002, the respondent Party alleges that the applicant does not use the apartment as his home but rather rents the apartment to a third party. As evidence, they attached minutes taken by the Ministry of Defence on 15 November 2001 where members of the Army Housing Fund found sub-tenants located in the apartment at Ulica Hamdije Čemerlića 6, apartment no. 8. Also in the observations on the admissibility and merits, the respondent Party provided information from the Ministry of Defence that the pre-war occupancy right holder, B.Č., has never filed a claim for repossession of the apartment in question.

25. On 8 November 2002, the respondent Party provided further information on the court proceedings. On 4 November 2002, the judge reviewed the whole file and noted the following: firstly, the file contained the provisional measure issued by the Chamber, but the plaintiff did not request the Court to issue any provisional measure, thereby the Court cannot rule on that issue; and secondly, the judge noted there is no evidence in the file of the lawsuit having been submitted to B.Č., and for that reason the hearing was scheduled for 3 February 2003, to allow the lawsuit to be submitted to B.Č. in The former Yugoslav Republic of Macedonia.

26. On 6 February 2003, the respondent Party provided further information with regard to the hearing scheduled for 3 February 2003. On 4 February 2003, the judge noted that the applicant was represented by Muenes Kutundžić, however, representatives from the two other parties to the dispute were not present, (the Federation Army and B.Č.). The Federation Army had been duly summoned, while the second defendant, B.Č., was not; only the return receipt was in the file evidencing that the Court had requested the Ministry of Justice to summon B.Č. to the hearing. The judge explained that B.Č. would have to be summoned again through the Ministry of Justice as his current address was in The former Yugoslav Republic of Macedonia, and for that reason the next hearing was scheduled for 3 July 2003.

IV. RELEVANT DOMESTIC LEGISLATION

A. Relevant legislation of the Socialist Federal Republic of Yugoslavia

27. The applicant contracted to purchase his apartment from B.Č., who had purchased his apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia –hereinafter- "OG SFRJ", no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the JNA.

28. Article 20 of the Law provided that the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase the apartment on the basis of a contract made with the authority responsible for the apartment. Article 23 of the Law placed an obligation on the purchaser of an apartment to submit, within 30 days of the conclusion of the purchase contract, a request to the Land Registry to register the ownership of the apartment. This Law was never adopted as part of the law of Bosnia and Herzegovina.

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

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

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

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

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

33. The Law on Abandoned Apartments, issued on 15 June 1992 as a Decree with force of law, was adopted as law on 1 June 1994 and amended on various occasions (OG RBiH nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). It governed the re-allocation of occupancy rights over socially owned apartments that had been abandoned. Article 2 set forth that apartments were to be considered abandoned if the pre-war occupancy right holder and his family members left the apartment, even if temporarily.

34. If the pre-war occupancy right holder failed to resume using the apartment within the applicable time limit laid down in Article 3 (i.e. before 6 January 1996), he or she was regarded as having abandoned the apartment permanently. According to Article 10, it was to result in the deprivation of the occupancy right.

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

36. On 1 June 1994, the Assembly of the Republic of Bosnia and Herzegovina adopted the previously issued Decrees with legal force as Law (OG RBiH no. 13/94). Thus, the Decrees mentioned above in paragraphs 31, 32, 33, and 35 were adopted as law on this date.

37. On 12 July 1994, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on Real Property Transactions (OG RBiH no. 18/94). This Decree was adopted as law on 24 November 1994 (OG RBiH no. 33/94) and entered into force eight days later. Article 1 provided that contracts relating to real property transactions must be in writing and that the signatures of the contracting parties must be verified by a competent court. It further provided that any contract, relating to property transactions, that had been concluded in a manner that did not conform with the provisions of paragraph 1 of this Article shall have no legal force or

effect. Article 3 of the Decree provided that written contracts concluded prior to the entry into force of the Decree were valid if the parties had fulfilled all obligations arising from the contracts completely or substantially. It further provided that contracts concluded prior to the entry into force of the Decree would be considered valid provided the parties had their signatures certified by a competent court within six months of the entry into force of the Decree.

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

39. On 22 December 1995, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on the Transfer of Resources of the Socialist Federal Republic of Yugoslavia into the property of the Republic. This Decree provided that contracts for the sale of apartments and other property concluded on the basis of *inter alia* the Law on Securing Housing for the JNA were invalid. This Decree also provided that questions connected with the purchase of real estate, which was the subject of annulled contracts, would be resolved under a law to be adopted in the future. This Decree came into force on 22 December 1995. It was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 18 January 1996 (OG RBiH 2/96).

C. Relevant Legislation of the Federation of Bosnia and Herzegovina

1. The Law on Sale of Apartments with an Occupancy Right

40. Article 27 of the Law on Sale of Apartments with an Occupancy Right (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter –"OG-FBiH" nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01 and 61/01) provides that the ownership right to an apartment shall be acquired upon registration of that right in the land books.

41. Article 39a of the Law on Sale of Apartments with an Occupancy Right states that a person who entered into a contract to purchase a JNA apartment, who holds the occupancy right over said apartment, and is legally using the apartment, shall be registered as that apartment's owner with the competent court by an order of the relevant housing authority within the Federation Ministry of Defence. Article 39c states that Article 39a shall also apply to an occupancy right holder who has "exercised the right to repossess the apartment under the Law on Cessation of the Application of the Law on Abandoned Apartments."

42. Article 39d states that if an individual fails to realise their rights to the apartment with the Federation Ministry of Defence, they may initiate proceedings before the competent court.

43. The Instruction on the Implementation of Articles 39a, 39b, and 39c of the Law on Sale of Apartments with an Occupancy Right (OG FBiH no. 6/00) states that the Ministry of Defence shall issue an order for registration of the ownership right over the apartment on the request of the occupancy right holder, or a member of his or her family household, who realised the right to repossess the apartment in accordance with the Law on Cessation of the Application of the Law on Temporary Abandoned Apartments and who had previously concluded a legally binding contract on purchase of the apartment from the JNA Housing Fund before 6 April 1992.

2. The Law on the Legal Relations of Property

44. Article 38 of the Law on the Legal Relations of Property (OG FBiH no. 6/98) states that the right to ownership of real estate shall be acquired on the basis of a legal transaction and by registration of the right into the public land books, provided that the right holder is *bona fide*. The *bona fides* of the person seeking registration shall be presumed in the absence of proof to the contrary.

3. Law on Civil Procedure

45. Article 199 of the Law on Civil Procedure (OG FBiH no. 42/98 and 3/99), paragraph 3, sets forth that any suspended proceedings shall only be resumed upon the proposal of one of the parties, when the reasons for the suspension of the proceedings have ceased (deleted text).

V. ALLEGED AND APPARENT VIOLATIONS OF HUMAN RIGHTS

46. The applicant alleges a violation of his rights to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention and the right to respect for his home under Article 8 of the Convention, his right to a fair trial within a reasonable time under Article 6 of the Convention and his right to an effective remedy under Article 13 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

47. The Federation submitted observations on the admissibility and merits of the application on 16 December 2002. As to the facts of the case, the Federation highlights that B.Č was not registered as the owner over the apartment in question. The Federation provided more information on the proceedings before the Municipal Court, which is included above (see paragraphs 21-26).

48. As to the admissibility, the Federation submits that the application is not admissible against the Federation of Bosnia and Herzegovina because this matter is essentially a private dispute between B.Č. and the applicant. Furthermore, the applicant did not rely on the lawful procedures and organs of the Federation when he purchased the apartment, nor when he returned to the apartment after the war.

49. Secondly, the Federation submits that the application is not admissible because domestic remedies have not been exhausted, nor has the applicant shown that they would not be effective. The Federation points out that the applicant's lawsuit to determine his ownership over the apartment in question is still pending. Once the first instance organ issues its decision, the applicant will have the possibility to appeal.

50. As to the merits of the application, the respondent Party submits that the application is ill founded. Specifically, as to a potential violation under Article 6 of the Convention, the respondent Party first points out that at the time of filing the lawsuit, the address of B.Č was unknown. When the address was obtained, the Court sent several invitations to B.Č. through the Ministry of Justice, but without success. On 23 June 1998, the proceedings were suspended in accordance with the Decree with the Force of Law on Amendments to the Law on Means and Financing of the Army of RBiH. The Federation concedes that during the course of 1998 the necessary laws were passed to enable the continuance of the proceedings suspended by the aforementioned Decree. The Federation submits that in accordance with Article 199 of the Law on Civil Procedure, one of the parties to the suspended proceedings must make a request to re-initiate the proceedings, which was done by the representative of the applicant on 4 September 1999. The respondent Party points out that the applicant himself requested the first instance organ, on 2 March 2000 and 31 July 2002, to halt proceedings in the case until the Chamber issues a decision. Of its own initiative then, the Court scheduled hearings in the case on 3 April 2001 and 22 May 2001, and both hearings were postponed to allow the applicant to submit the address of his new representative. On 21 August 2002, the first instance organ scheduled a hearing for 3 February 2003 to allow the summons to reach B.Č. The respondent Party concludes that the conduct of the applicant has contributed to the length of the proceedings, and not the conduct of the organs of the respondent Party.

51. As to a potential violation under Article 13 of the Convention, the respondent Party notes that the applicant has filed a lawsuit before the competent court in accordance with the Law on Civil Procedure for establishment of one's ownership right, which is still pending. The respondent Party

asserts that the domestic legislation provides an adequate remedy for the applicant. Therefore, the application does not disclose any violation under Article 13 of the Convention.

52. As to a potential violation under Article 1 of Protocol No. 1 to the Convention, the respondent Party first asserts that it has not violated the applicant's rights to the peaceful enjoyment of his possessions because he was not the occupancy right holder or member of the family household of the occupancy right holder over the apartment in question, nor did he live there on 30 April 1991. Accordingly, he can not lawfully dispose of or occupy the apartment in question. Furthermore, the respondent Party asserts that the applicant concluded a contract on purchase of the apartment knowing that B.Č. was not the *bona fida* owner over the apartment in question, because he had not registered his ownership over the apartment. Additionally, the respondent Party notes that it has no evidence that the applicant paid the purchase price to B.Č., nor did the applicant ever submit to the organs of the respondent Party any valid evidence that he had purchased the apartment in question. Finally, the civil proceedings initiated by the applicant to determine the lawful ownership over the apartment is further evidence that the respondent Party did not violate any of the rights set forth in the Agreement. In conclusion, for all of the aforementioned reasons, the respondent Party asserts that it did not violate Article 1 of Protocol No. 1 to the Convention.

53. As to Article 8 of the Convention, the respondent Party asserts that the apartment in question is without doubt the "home" of the pre-war occupancy right holder, B.Č. The applicant obtained the use of the apartment in question without respecting the legal norms prescribed by the authorities of Bosnia and Herzegovina, and furthermore, leases the apartment in question to sub-tenants. The respondent Party concludes that it is not responsible for any violations under Article 8 of the Convention because it is not established that the apartment in question is the applicant's "home" within the meaning of Article 8 of the Convention.

B. The Applicant

54. The applicant maintains his application in whole. He seeks to establish that he is the lawful owner of the apartment in question, and to be registered as the lawful owner.

55. The applicant, in response to the observations on the admissibility and merits of the respondent Party, in a letter received on 3 January 2003, requested the Chamber to reject the observations as out of time, in accordance with Rule 49 of the Chamber's Rules of Procedure. In the same letter, the applicant alleges that the organs of the respondent Party have been provoking and disturbing his family even after the issuance of the provisional measure. He alleges that the Military Housing Fund has sent summons to him, and that they have illegally entered the apartment and provoked his family members by informing them that they will have to vacate the apartment immediately. The applicant requested the Chamber to expand the earlier provisional measures so as to forbid the respondent Party from disturbing him and his family until the final decision of the Chamber, or Court, or any other organ of the State.

56. As to the respondent Party's observations related to Article 6 of the Convention, the applicant states that he has done everything possible as an individual to finalise the court proceedings. Specifically, he notes that he was not always duly summoned by the court, and when he received any request from the court he always responded in writing. The applicant alleges that as soon as he found out that his lawyer had decided not to represent him any longer, as well as when his representative unexpectedly left the country, he replied to the court within the time limit given. He contends that the respondent Party is responsible for not contacting the second defendant, B.Č., six years ago, and implies that they have deliberately slowed down the proceedings.

57. As to the merits of the application, the applicant asserts that the respondent Party has no rights whatsoever to the apartment in question. The applicant states that according to several of the decisions from the Chamber, and the "law on apartments", the purchase contract of B.Č. was valid, and he was the lawful owner of the apartment. The applicant subsequently purchased it from B.Č. and the court's failure to register him as the lawful owner of the apartment constitutes a violation of his rights under the Convention.

VII. OPINION OF THE CHAMBER

A. Admissibility

58. Before considering the case on the merits, the Chamber must first decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement, which, so far as relevant, provides as follows: "The Chamber shall decide which applications to accept…in so doing the Chamber shall take into account the following critieria: (a) Whether effective domestic remedies exist, and the applicant has demonstrated that they have been exhausted…"

59. The Chamber is aware that proceedings are still pending before the Court. According to the Chamber's admissibility criteria set forth in Article VIII(2)(a) of the Agreement, domestic remedies must be exhausted in order for the Chamber to be competent to consider the case. However, the Chamber has previously held that the remedies available must be sufficiently certain not only in theory but in practice. Additionally, it is necessary to take into account not only the existence of formal legal remedies, but also the general legal and political context in which they operate, as well as the personal circumstances of the applicant.

60. Given that the proceedings have been pending before the same court (the Municipal Court II in Sarajevo) for well near seven years, April 1996 to the present, the Chamber concludes that the domestic remedies have not proven effective to date, nor is there any indication that the domestic authorities will resolve the case in the near future. For these reasons, the application is admissible despite the pending court proceedings.

61. The respondent Party also asserts that the application is inadmissible as *ratione personae* against the Federation as the dispute essentially involves two private parties and the applicant has not made use of the legal norms prescribed by the Federation. The Chamber takes the view that the applicant's complaints are alleged violations which appear to have been committed by the organs acting under the authority of the respondent Party. For this reason, the application is admissible with respect to the Federation.

62. As the Chamber can find no other reasons to declare the application inadmissible, the Chamber declares the application admissible in its entirety.

B. Merits

63. Under Article XI of the Agreement, the Chamber must next address 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 6 of the Convention

64. Article 6 paragraph 1 of the Convention, so far as relevant, provides 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. . . "

65. The applicant primarily complains of the length of proceedings before the domestic bodies. The reasonableness of the length of proceedings is to be assessed based on criteria laid down by the European Court of Human Rights, namely the complexity of the case, the conduct of the applicant, the conduct of 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 10, Decisions and Reports 1998).

66. It is an uncontested fact that the applicant initiated proceedings before the competent court to determine the ownership over the apartment in question on 1 April 1996. It is from this date that the Chamber must consider the reasonableness of the length of proceedings under Article 6 of the Convention.

a. The complexity of the case

67. The applicant seeks the domestic organs to confirm his ownership right over the apartment and allow him to be registered as the lawful owner. The applicant is in possession of the purchase contract, which was verified in court. The Chamber holds that this determination is not so complex as to warrant such extended proceedings.

b. The conduct of the applicant

68. The Chamber notes that the applicant on two occasions (2 March 2000 and 31 July 2002) requested the first instance organ to suspend proceedings until the Chamber issues its decision. The applicant's own requests, as the plaintiff in the matter, would justifiably cause the first instance organ to suspend the proceedings. The applicant did not deny that he made these requests. However, despite the applicant's requests, the first instance court proceeded to schedule hearings, which would indicate that they chose to ignore the applicant's requests. It appears that the applicant has failed to timely respond to some of the Court's requests. The applicant, however, alleges that he has taken all necessary steps as an individual to bring the proceedings to a resolution.

c. The conduct of the national authorities

69. The Chamber recalls that on 3 February 1995, the Presidency of the Republic of BiH issued a Decree with force of law which effectively adjourned proceedings related to the purchase of apartments which were obtained under the Law on Securing Housing for the JNA. The Decree entered into force on 10 February 1995. In the present case, the Court, two years after the applicant filed his suit, adjourned the proceedings on 23 June 1998 in accordance with this Decree. The Chamber has earlier held that the Decree violated the right to access to the court under Article 6 of the Convention (see, *e.g.* case no. CH/97/82 *et.al. Velimir Ostojić and 31 other JNA cases,* decision on admissibility and merits of 15 January 1999, paragraph 96, Decisions January-July 1999).

70. The respondent Party submits that according to Article 199 of the Law on Civil Procedure, the applicant was responsible for re-initiating proceedings after the adjournment. Accordingly, the respondent Party states that the proceedings were re-initiated upon the request of the applicant's representative on 4 September 1999. Since that time, numerous hearings have been scheduled and postponed. The respondent Party alleges that after the postponed hearing of 14 December 1999, (allegedly the first one after the proceedings were re-activated) the Court sent letters to the applicant requesting him to provide the address of his appointed representative. Instead of timely replying, the applicant, on 2 March 2000, sent a submission requesting that the proceedings be suspended until the Chamber issues its decision. The applicant did not specifically deny this, but claims that he replied to all requests in a timely manner. From the facts submitted, it appears that no action was taken until 3 April 2001 when the Court scheduled a hearing, which was postponed. The next hearing on 22 May 2001 was also postponed.

71. One of the primary reasons for the delays and postponing of the hearings appears to be in inviting one of the defendants, B.Č., to the hearing. Upon filing of the suit, it appears that his address was not known. However, at some point during the proceedings, the Court obtained his exact address in The former Yugoslav Republic of Macedonia. Despite obtaining this information, the Court has no evidence that the defendant has ever received its summons. In the Chamber's estimation, summoning an individual in another country, particularly in one of the states of the former Yugoslavia, should not pose such an obstacle as to so significantly delay the proceedings.

d. Conclusion

72. The Chamber concludes that despite the applicant's two requests to suspend the proceedings, the case is not so complex as to warrant such a delay as has occurred, and the actions of the respondent Party, in particular the adjournment of the proceedings in 1998 and the failure to effectively summon one of the defendants, violate the applicant's right to a fair trial in a reasonable time under Article 6 of the Convention.

2. Article 13 of the Convention

73. The applicant also maintains that his rights under Article 13 of the Convention have been violated in that no effective remedy is available to him. 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."

74. In view of its finding under Article 6 of the Convention, the Chamber considers its unnecessary also to examine the application under Article 13 of the Convention. The requirements of Article 13 of the Convention are less strict than those of Article 6 of the Convention and are absorbed by the latter (see, e.g. European Court of Human Rights, *Hentrich v. France*, judgment of 22 September 1994, Series A No. 296, paragraph 65).

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

75. The applicant alleges a violation of the peaceful enjoyment of his possessions with regard to the apartment he purchased. Article 1 of Protocol No. 1 to the Convention provides 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."

76. Article 1 of Protocol No. 1 to the Convention thus contains three rules. The first rule enunciates the general principle that one has the protected right to the peaceful enjoyment of one's property. The second rule covers deprivation of property and subjects it to the requirements of the public interest and conditions laid out in law. The third rule recognises that States are entitled to control the use of property and subjects such control to the general interest and domestic law. It must then be determined in respect of these conditions whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's rights, bearing in mind that the last two rules should be construed in light of the general principle (see among other authorities, case no. CH/96/17, *Blentić* decision on admissibility and merits of 5 November 1997, paragraphs 31-32, Decisions March 1996-December 1997). Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

a. The existence of "possessions" under Article 1 of Protocol No. 1 to the Convention

77. The Chamber must first consider whether the applicant had any rights under his contract with B.Č. that could constitute "possessions" for the purpose of Article 1 of Protocol No. 1 to the Convention. In previous decisions of the Chamber, the Chamber has consisently held that rights under a contract to purchase an apartment concluded with the former JNA, pursuant to the Law on Securing Housing for the JNA, constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention (see, e.g. case no. CH/96/3, 8 and 9 *Medan, Bastijanović and Marković*, decision on the merits of 3 November 1997, paragraphs 32-34, Decisions on Admissibility and

Merits March 1996-December 1997; case no. CH/96/2 *et. al*., *Podvorac and Others,* decision on admissibility and merits of 14 May 1998, paragraphs 59-61, Decisions and Reports 1998). In the present case, the applicant did not conclude the contract directly with the former JNA, but rather with B.Č., who had concluded a contract with the former JNA. On 3 April 1992, the applicant purchased the apartment from B.Č and, according to the contract, paid 15,000,000.00 Yugoslav Dinars (*jugoslovenskih dinara).* In accordance with its earlier case-law (cited above), where the Chamber concluded that the rights under a contract concluded with the former JNA constituted possessions, the Chamber also concludes in the present case that the applicant's contract with B.Č. transferred to him rights to the apartment that constitute a possession within the meaning of Article 1 of Protocol No.1 to the Convention.

78. The Chamber also recalls that the written contract with B.Č. was entered into on 24 February 1992, after the Decree of 15 February 1992, which imposed a temporary prohibition on sales of former JNA apartments (see paragraph 30 above). However, as in earlier decisions of the Chamber, the Chamber notes that the validity of the Decree of 15 February 1992 appears also to be open to question since it prohibited contracts which were provided for in federal law, whereas Article 207 of the Constitution of the Socialist Federal Republic of Yugoslavia provided that republican and provincial statutes and other legislation "may not be contrary to federal statute." The Chamber also recalls that the prohibition provided for in the Decree was a temporary one, which expired in February 1993 (see, the above-mentioned *Podvorac and Others* decision, paragraph 60 and *Medan, Bastijanović and Markovic*, paragraph 33). Moreover, the Chamber takes particular notice of Article 39a of the Law on the Sale of Apartments with an Occupancy Right, which provides that the "Federal Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment" if the occupancy right holder "uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992". Article 39a is one of the central provisions for the recognition of privatisation of former JNA apartments in the Federation. Notwithstanding the earlier temporary ban on the sale of apartments of 15 February 1992, Article 39a implicitly recognises the validity of all purchase contracts concluded before 6 April 1992, such as the contract at issue in this case. Had Article 39a intended only to recognise the validity of purchase contracts concluded before 15 February 1992, it could have said so, but it does not. Therefore, Article 39a offers additional support for the recognition of the contract on purchase at issue in this case, which was concluded on 24 February 1992 (see case no. CH/99/2028 *Crnogorčević,* decision on admissibility and merits, delivered on 11 October 2002, paragraph 56). Taking these factors into account, the Chamber does not consider it established that the contract entered into by B.Č was invalid, although it may be challengeable in the courts. In considering whether the contractual right of B.Č. was a "possession" the Chamber notes that the European Court of Human Rights has held that rights which may be subject to challenge in court proceedings, as well as claims for compensation requiring court proceedings to make them effective, may be "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. In particular in the case of *Stran Greek Refineries v. Greece* it held that an arbitrage award which was the subject of challenge in the Court of Cassation was a "possession" (1994 Series A No. 301, paragraph 62). In the case of *Pressos Compania Naviera v. Belgium* it held that claims to compensation under the law of tort were "possessions" (1995 Series A No. 332, paragraph 31). Similarly, in the Chamber's opinion, the contractual right of B.Č., although subject to some uncertainty as a result of the Decree of 15 February 1992, should nonetheless be regarded as "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. Following this, on the basis of the contract of 3 April 1992 between B.Č and the applicant, the Chamber considers that all the rights of the purchaser B.Č. should flow to the applicant, as if the applicant "stepped into the shoes of" the prior purchaser.

b. Interference with the applicant's rights

79. If the prior purchaser was seeking to establish his ownership rights over the apartment, under the applicable law, the authorities would be required to recognise his purchase contract (provided that it was valid), and all rights flowing from it. In the present case, the authorities' failure to recognise the applicant's rights under the purchase contract constitutes an interference with the applicant's rights. This failure can be traced to two distinct sources.

80. Firstly, the fact that the RBiH Army declared the apartment abandoned in September 1996, knowing that the applicant was living in the apartment and that he had a contract on purchase for the apartment, constitutes an interference with the applicant's rights.

81. Secondly, although not specifically raised by the respondent Party or the applicant, the Chamber considers that the on-going refusal to recognise the applicant's contractual rights to the apartment stems from the Decree of 22 December 1995 (see paragraph 39 above), as the effect of that Decree was to annul the rights that B.Č. had obtained under the purchase contract, and in turn, the rights that the applicant exercises over the apartment in question. The Chamber is aware that the Decree was issued and adopted as law by the Republic of Bosnia and Herzegovina. However, the Chamber will consider the responsibility of the Federation in so far as it applied that Decree as a part of its law. It is accordingly necessary for the Chamber to examine whether these interferences by the Federation are justified under Article 1 of Protocol No. 1 to the Convention as being "subject to conditions provided for by law" and "in the public interest."

c. Legality and proportionality of the interference

82. As to the respondent Party's claim that the B.Č. was not the *bona fida* possessor of the apartment, as he had not registered his ownership in the land registry books, the Chamber recalls that B.Č. was prevented from registering his ownership due to the temporary Decree of 15 February 1992 from a legal point of view, and factually, due to the outbreak of the war. However, the Chamber considers that the fact that B.Č. did not register his ownership can not prevent him from validly transferring his rights under the purchase contract to the applicant.

83. Furthermore, after the applicant had returned to the apartment in March 1996 following the reintegration of the neighbourhood Grbavica in Sarajevo, the apartment was declared permanently abandoned by the RBiH Army in September 1996. By doing so, the apartment then fell, at the time, according to the Law on Abandoned Apartments, under the jurisdiction of the Ministry of Defence. This action further interfered with the applicant's rights to the apartment in question. Before examining the proportionality of such an action, it must first be determined whether it is "subject to conditions provided for by law".

84. The Law on Abandoned Apartments, issued on 15 June 1992, governed the reallocation of occupancy rights over socially owned apartments that had been abandoned. Article 2 of the Law on Abandoned Apartments provided that an apartment was to be declared abandoned if, even temporarily, it was not used by the occupancy right holder or members of his or her household (see paragraph 33 above). The Chamber holds that the Federation incorrectly applied the Law on Abandoned Apartments, as the apartment was in fact no longer socially owned after B.Č had purchased it from the former JNA, and the applicant from B.Č. Furthermore, the Ministry of Defence knew that the applicant was in the apartment at the time it was declared abandoned and had purchased the apartment in 1992. As the Law on Abandoned Apartments was not lawfully applied in the applicant's case, that in itself is sufficient to find that there has been a violation under Article 1 of Protocol No. 1 to the Convention. It also dispenses the Chamber from having to consider whether the acts complained of were proportional to the aim sought.

85. The Chamber will, in accordance with its approach taken in other JNA cases, assess whether the refusal to recognise the applicant's rights was justified, for the purposes of Article 1 of Protocol No. 1 to the Convention. In this respect, the Chamber will examine the interference stemming from the Decree of 22 December 1995, and whether this Decree pursued a legitimate aim. The Federation, in previous cases (see e.g. the above-mentioned *Medan and Others*, paragraph 36 and *Ostojić and Others*, paragraph 92) has submitted that the purpose of the decree was to rectify a violation of the constitutional principle of equality of treatment. It has argued that some members of the former JNA had been placed in an especially privileged position in relation to the purchase of their flats and were able to purchase them on terms more favourable than other occupiers of socially owned apartments. The European Court of Human Rights has held that in deciding what is in the public interest the national authorities enjoy a wide "margin of appreciation" and that their judgement will be respected unless it was "manifestly without reasonable foundation" (see, e.g., Eur. Court HR, *James and Others v. United Kingdom*, 1986, Series A No. 98, paragraph 66). Bearing this wide margin of appreciation in mind, the Chamber can accept that the aim of putting all holders of

occupancy rights on an equal footing as regards their rights to purchase their apartments might in principle be regarded as a legitimate one.

86. It remains to be considered, however, whether there was a reasonable relationship of proportionality between the means employed and the end sought to be realised. In this respect the Chamber notes that the effect of the legislation was to annul retroactively, and without compensation, contractual rights which the applicant had held since 1992. In the Chamber's opinion such retroactive legislation must be regarded as a particularly serious form of interference with property rights. It involves an infringement of the principle of the rule of law, referred to in the Preamble to the Convention, and carries the danger of undermining legal security and certainty. In the Chamber's opinion, it can therefore be justified only by cogent reasons. Even though the purchaser B.Č. may have been able to purchase the apartment on relatively favourable terms, the Chamber is not satisfied that there was any form of social injustice involved in the system established by the Law on Securing Housing for the JNA which was of such magnitude as to justify retroactive legislation of the kind adopted (see the above-mentioned *Medan and Others* paragraph 37; *Podvorac and Others*, paragraphs 59-61; and *Ostojić and 31 Others,* paragraph 91). The same reasoning applies in the case of the applicant now before the Chamber. Accordingly, the Chamber finds, as in the earlier JNA cases decided on the merits, that the Decree of 22 December 1995 violated the rights of the applicant under Article 1 of Protocol No. 1 to the Convention.

87. The Chamber is aware that the Federation authorities have adopted Article 39 a,b,c,d, of the Law on Sale of Apartments with an Occupancy Right, which entered into force on 5 July 1999, in order to remedy the effects of the Decree of 22 December 1995 and to allow persons who entered into purchase contracts with the former JNA to register their ownership over such apartments. However, these provisions do not encompass the circumstances of the applicant, as he did not conclude the purchase contract with the former JNA. In this respect, the Federation authorities have not taken steps to remedy the interference with the applicant's rights under the purchase contract.

d. Conclusion

88. In conclusion, the Chamber holds that the applicant has valid rights to the apartment in question flowing from his purchase contract with B.Č., and the failure of the authorities to recognise his rights to the apartment under the purchase contract constitutes an ongoing interference with his right to the peaceful enjoyment of his possessions. Consequently, the Federation has violated Article 1 of Protocol No. 1 to the Convention.

4. Article 8 of the Convention

89. The applicant complains that his rights under Article 8 of the Convention have been violated. Article 8 of the Convention provides as follows,

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

90. Article 8 of the Convention first requires that the apartment in question, which is the subject of the applicant's complaint, be considered the applicant's "home". The respondent Party asserts that it is not his home as the Military Housing Commission discovered in November 2001 that the applicant was renting the apartment to sub-tenants. The applicant never expressely denied this allegation.

91. Given the finding under Article 1 of Protocol No. 1 to the Convention, and the dispute over the fact as to whether the apartment in question can be considered the applicant's "home" for the purposes of Article 8 of the Convention, the Chamber does not consider it necessary to consider the application under Article 8 of the Convention.

VIII. REMEDIES

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

93. With regard to the delayed court proceedings, the Chamber considers it appropriate to order the respondent Party to take all necessary steps to secure the speedy resolution of the applicant's claim before the Municipal Court II in Sarajevo, and in all further judicial proceedings.

94. With regard to the violation of the applicant's rights under Article 1 of Protocol No. 1 to the Convention, the Chamber notes that the outcome of the domestic court proceedings will allow the applicant, if he obtains recognition of the validity of the purchase contract, to realise his rights under the purchase contract. In the meantime, the Chamber considers it appropriate to order the respondent Party to bring an end to all further attempts to evict the applicant from the apartment. This order will replace the Chamber's previous order for provisional measures, and the Chamber withdraws the order for provisional measure as of the date of delivery of this decision.

95. The Chamber will order the respondent Party to report to it six months from the date this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken to comply with the above orders.

IX. CONCLUSION

96. For these reasons, the Chamber decides,

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

2. unanimously, that the applicant's rights to a fair hearing within a reasonable time as guaranteed by Article 6 of the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

3. unanimously, that by the refusal of the Federation authorities to recognise the applicant's rights to the apartment under the contract with B.Č. concluded on 3 April 1992, there has been a violation of the applicant's peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, that it is not necessary to consider the complaint under Article 13 of the European Convention on Human Rights;

5. unanimously, that it is not necessary to consider the complaint under Article 8 of the European Convention on Human Rights;

6. unanimously, to order the respondent Party to take all necessary steps to secure the speedy resolution of the applicant's claim before the Municipal Court II in Sarajevo, and in all further judicial proceedings;

7. unanimously, to order the respondent Party to bring an end to all further attempts to evict the applicant from the apartment, until a final and binding decision determining the applicant's rights to the apartment is issued. This order revokes the previous order for provisional measures issued by the Chamber on 15 June 1998;

8. unanimously, to order the respondent Party to report to it six months from the date this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel