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

Case nos. CH/02/11108 and CH/02/11326

Zoran BAŠIĆ and Željko ĆOSIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 May 2003 with the following members present:

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

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

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

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52 and 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina of Croat origin. Zoran Bašić (the "first applicant") and Željko Ćosić (the "second applicant") were jointly charged, along with four named others, for the murder of Jozo Leutar, the former Deputy Minister of Interior of the Federation of Bosnia and Herzegovina. On 6 April 2000 the Cantonal Court in Sarajevo issued a procedural decision ordering the arrest and detention of the applicants on suspicion of having been involved in the criminal act of terrorism under Article 146 paragraphs 1 and 3 of the Criminal Code of the Federation of Bosnia and Herzegovina. The first applicant was arrested and detained on 10 September 2000 and the second applicant was arrested and detained on 17 September 2000. The applicants' trial before the Cantonal Court in Sarajevo commenced on 7 June 2001[1] and they were held on remand until 12 November 2002 whereupon they were acquitted of all charges and released. The applicants' acquittal is not a final decision and is currently under appeal before the Supreme Court of the Federation of Bosnia and Herzegovina.

2. The applicants complain of various violations of their rights in relation to their detention and trial. The applicants further complain that they were discriminated against in the enjoyment of these rights because of their Croat origin.

3. The case raises issues under Article 5 paragraph 1(c), Article 5 paragraph 2, Article 5 paragraph 3, Article 6 paragraph 1, Article 6 paragraph 3(a) and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

4. The first applicant's application was introduced to the Chamber on 4 June 2002 and registered on the same day. The first applicant is represented by Nikica Gržić, a lawyer practising in Sarajevo. On 8 July 2002 the first applicant requested that the Chamber order the respondent Party, as a provisional measure, to release him from detention. On 16 July 2002, the President of the Second Panel decided not to order the provisional measure requested.

5. On 12 July 2002 the Chamber decided to transmit the first applicant's case to the respondent Party for its observations on admissibility and merits in accordance with Rule 49(3)(b) of the Chamber's Rules of Procedure.

6. On 17 July 2002 the first applicant submitted additional information to his request for the issuance of an order for provisional measures of 8 July 2002. He submitted to the Chamber the procedural decision of the Supreme Court of the Federation of Bosnia and Herzegovina (the "Supreme Court") by which the Court rejected his complaint that his continued detention was in violation of Article 5(3) of the Convention.

7. The second applicant's application was introduced to the Chamber on 22 July 2002 and registered on the same day. The second applicant is represented by Mirsad Sipović, a lawyer practising in Sarajevo. In his application to the Chamber, the second applicant requested that the Chamber order the respondent Party, as a provisional measure, to release him from detention. The second applicant also noted that the first applicant's application had previously been submitted to the Chamber alleging the same complaints, and therefore, for expediency, the second applicant requested that their applications be joined. On 26 July 2002, the Vice-President of the Second Panel decided not to order the provisional measure requested.

8. On 14 August 2002 the Chamber transmitted the second applicant's case to the respondent Party for its observations on admissibility and merits in accordance with Rule 49(3)(b) of the Chamber's Rules of Procedure.

[1] Two co-defendants were tried *in absentia* under Article 295(3) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina.

9. On 6 September 2002 the Chamber decided to join the applications in accordance with Rule 34 of the Chamber's Rules of Procedure.

10. On 16 and 18 September 2002 the Chamber received the respondent Party's written observations to the first application. On 20 September 2002 the Chamber received the respondent Party's written observations to the second application. These were transmitted to the applicants on 19 and 26 September 2002, respectively.

11. On 14 October 2002 the Chamber received the first applicant's response to the written observations of the respondent Party of 16 and 18 September 2002. On 23 October 2002 the Chamber received the second applicant's response to the written observations of the respondent Party of 20 September 2002.

12. On 19 November 2002 the Chamber wrote to the respondent Party requesting a copy of the judgment of the Cantonal Court of 12 November 2002 by which the applicants were acquitted. The Chamber received a letter from the respondent Party on 28 November 2002 stating that the written judgment had not yet been prepared by the Cantonal Court.

13. On 27 November 2002 the Chamber wrote to the applicants requesting whether they wished to pursue their applications before the Chamber in light of their acquittals. On 2 and 4 December 2002 the Chamber received, through the first and second applicants' legal representatives respectively, confirmation that they wished to proceed with their applications, as they believed the proceedings had not been finalised by their acquittals at first instance.

14. On 17 December 2002 the Chamber wrote to the respondent Party requesting information on the procedure adopted concerning the use of the protected witnesses. On 3 January 2003 this information was received and transmitted to the applicants. On 28 January 2003 the Chamber received the applicants' written observations.

15. On 19 December 2002 the Chamber wrote to the applicants requesting full details concerning the procedural decisions extending their detention and against which procedural decisions they submitted appeals. On 24 December 2002 the Chamber received the first applicant's answer and on 26 December 2002 the Chamber received the second applicant's answer.

16. On 6 January 2003 the Second Panel relinquished jurisdiction of the applications in favour of the Plenary Chamber in accordance with Rule 29(2) of the Chamber's Rules of Procedure.

17. On 10 February 2003 the Chamber wrote to the respondent Party repeating its request that it submit a copy of the written judgment of 12 November 2002 by which the applicants were acquitted. Additionally, the Chamber asked whether the Cantonal Prosecutor had submitted an appeal against the aforementioned judgment. On 17 February 2003 the Chamber received a copy of the written judgment along with a copy of the Cantonal Prosecutor's appeal submitted to the Supreme Court on 11 February 2003.

18. On 9 April 2003 the Chamber wrote to the respondent Party requesting whether a procedural decision had been issued during July 2001 by which the applicants' detention on remand was extended. On 28 April 2003 the respondent Party submitted to the Chamber the procedural decision of 9 July 2001 by which the applicants' detention on remand was extended for an additional period of two months.

19. The Chamber deliberated on the admissibility and merits of the cases on 2 July 2002, 6 September 2002, 8 October 2002, 7 November 2002, 6 January 2003, 6 February 2003, 8 March 2003, 1 and 3 April 2003 and 5 May 2003. On the latter date the Chamber adopted the present decision.

III. FACTS

A. Pre-trial proceedings and detention in the course of the trial

20. The indictment against the applicants alleged that during March 1999 the applicants, along with four named others and other unnamed individuals, held a series of secret meetings in which they conspired to murder the former Deputy Federation Minister of Interior, Jozo Leutar. It is further alleged that subsequent to a meeting on 12 or 13 March 1999, the first applicant delivered a briefcase containing an explosive device to the second applicant, who was employed at that stage by the Federation Ministry of Interior as Jozo Leutar's driver. Furthermore, according to the Cantonal Prosecutor, the first applicant fixed an explosive device to the underside of the passenger seat in Jozo Leutar's vehicle and on 16 March 1999 the device was detonated by two unnamed individuals who had travelled from Kiseljak to Sarajevo that same morning. The Prosecution alleged that the explosive device was detonated from a telephone box located in the area of Ciglane, a short distance away from where the vehicle was parked. It appears that the telephone box disappeared sometime thereafter and all attempts by the applicants and the prosecuting authorities to locate it have proven unsuccessful. Jozo Leutar died on 28 March 1999 at Koševo Hospital, Sarajevo, as a result of serious head injuries received from the explosion. According to the facts as presented by the prosecuting authorities, the second applicant knowingly drove the car in question with an explosive device attached to the undercarriage for three days and on the third day was injured by an act in which he participated. It is indisputable that the second applicant received injuries from the explosion as several pieces of metal were surgically removed from his skull shortly after the explosion, although the gravity of such injuries has not been clearly established.

21. On 6 April 2000 the Cantonal Prosecutor submitted a request for the commencement of an investigation against the applicants and requested their arrest and immediate detention.[2] The Cantonal Court in Sarajevo (the "Cantonal Court") subsequently issued a procedural decision ordering the arrest and immediate detention of both applicants for a period of one month in accordance with Article 183(2)(i) of the Code of Criminal Procedure (see paragraph 74 below) on the ground that the applicants were at that time fugitive suspects "on the run". Therefore, they were considered to be at risk of flight and their detention was necessary.

22. At this stage, according to the respondent Party, neither of the applicants' whereabouts were known and, as stated above, they were considered to be "fugitives". On 10 and 17 September 2000 the first and second applicants were arrested and immediately taken into custody. However, despite the applicants' apparent "fugitive" status, the first applicant was at home in bed with his wife when he was arrested and the second applicant was employed by the State Border Service for Bosnia and Herzegovina during this time and was in fact on authorised sick leave at the time of his arrest.

23. On 9 and 16 October 2000 a Panel of Judges of the Cantonal Court issued procedural decisions against the first and second applicant respectively, extending their detention for an additional period of two months in accordance with Article 188(2) of the Code of Criminal Procedure (see paragraph 78 below) on the basis that the investigation had not been concluded and that it was necessary to hear a number of witnesses and expert opinion. The Cantonal Court stated that the applicants' detention was obligatory under Article 183(1) of the Code of Criminal Procedure.

24. On 7 and 14 December 2000 the Supreme Court issued procedural decisions against the first and second applicant respectively, by which it extended the applicants' detention for a further period of three months in accordance with Article 188(2) of the Code of Criminal Procedure (see paragraph 78 below). The extension of detention was ordered upon the recommendation of the Cantonal Prosecutor on the basis of the complexity of the subject matter and that the investigation procedure was connected to certain undisclosed problems. The detention was therefore extended for

[2] The first applicant submits that the request to open the investigation was in fact filed on 21 September 2000 and not on 6 April 2000. However, it is evident from the case file that the procedural decision issued by the Cantonal Court on 6 April 2000 ordering the applicants' arrest and detention at the request of the Cantonal Prosecutor was in fact submitted on or before 6 April 2000.

the period stipulated by law, as the applicants' detention remained obligatory under Article 183(1) of the Code of Criminal Procedure.

25. On 15 February 2001 the investigative judge of the Cantonal Court submitted a request to the Supreme Court to hear the testimony of two protected witnesses. This request was received by the Supreme Court on 16 February 2001.

26. On 19 February 2001 the protected witness no. 30 and on 20 February 2001 the protected witness no. 31 appeared before a Panel of the Supreme Court to give evidence. During this hearing the identity of the protected witnesses was made known to the judges of the Supreme Court Panel.

27. On 9 March 2001 the Cantonal Prosecutor filed an indictment against both applicants within the time limit prescribed by Article 188(3) of the Code of Criminal Procedure (see paragraph 78 below). The first applicant submitted an appeal against the indictment objecting to the jurisdiction of the Cantonal Court under the Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina (see paragraphs 82 to 83 below). The second applicant also submitted an appeal against the indictment although he did not at this stage raise the issue of the competence of the Cantonal Court. On 11 May 2001 the Cantonal Court rejected the applicants' respective appeals as ill-founded. Their detention on remand was subsequently extended by procedural decisions issued by the Panel of Judges of the Cantonal Court for additional periods of two months on 9 May 2001, 9 July 2001, 7 September 2001 and 7 November 2001 on the ground that their detention on remand remained obligatory under Article 183(1) of the Code of Criminal Procedure.

28. On 28 March 2001 the Deputy Special Representative of the Secretary-General of the United Nations, Julian Harston, attended a memorial service for Jozo Leutar. There he stated, insofar as is relevant to the application:

> "I am here today as the Deputy Special Representative of the Secretary-General, United Nations Mission in Bosnia and Herzegovina, but I speak to you now as someone who has a professional responsibility for police matters in BiH. I feel deeply that it is my responsibility to pay tribute to a Deputy Minister of Interior, slain in the course of his duty.
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> "…
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> "Those who are suspects in his tragic assassination are linked to organized crime, drug trafficking and other major offences. These amoral killers remained at large, far too long. Their criminal actions have degraded every community in BiH and they have broken the special bond between the police and society."

29. At some point during September 2001, the second applicant submitted an appeal against the procedural decision of 7 September 2001 on the ground that no reasonable suspicion existed and that the Cantonal Court had failed to give sufficient legal and factual reasons for extending his detention. On 20 September 2001 the Supreme Court rejected his appeal repeating that his detention was obligatory under Article 183(1) of the Code of Criminal Procedure once it had established that a reasonable suspicion existed that he had committed the offence with which he was charged. In this respect the Supreme Court concluded that the Cantonal Court had properly assessed that there existed a reasonable suspicion.

30. On 8 November 2001 the High Representative issued the Decision of the Law of Amendments to the Code of the Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 50/01), abolishing the measure of compulsory detention by deleting Article 183(1) of the Code of Criminal Procedure.

31. The second applicant thereafter submitted a new appeal to the Cantonal Court against the procedural decision of 7 November 2001 on the ground that the application of obligatory detention had been removed by the High Representative's Decision of the Law of Amendments to the Code of

the Criminal Procedure of the Federation of Bosnia and Herzegovina, which entered into force on 8 November 2001.

32. On 15 November 2001 the Cantonal Court issued a procedural decision taking into account the Decision of the Law of Amendments to the Code of the Criminal Procedure, as raised by the second applicant's appeal, but extended both applicants' detention for an additional period of two months on the grounds that they were charged with a serious criminal offence that carried a sentence of long term imprisonment. The Cantonal Court further stated that their detention on remand was necessary, because, considering the manner in which the crime was carried out, the applicants posed a credible threat to public safety in accordance with Article 183(2)(iv) of the Code of Criminal Procedure. Moreover, the Cantonal Court assessed that there was a risk of intimidation or influence in accordance with Article 183(2)(ii) of the Code of Criminal Procedure due to the fact that a number of witnesses had been proposed by the Cantonal Prosecutor and the defendants, some of which resided in the same area as the applicants. Both applicants submitted appeals against the procedural decision of 15 November 2001 on the basis that the measure of obligatory detention no longer applied. On 23 November 2001 the Supreme Court issued a decision rejecting the applicants' appeals. The Supreme Court agreed that the measure of obligatory detention no longer applied, but held that the Cantonal Court had provided sufficient reasons for extending the applicants' detention on remand in accordance with Articles 183(2)(ii) and 183(2)(iv) of the Code of Criminal Procedure.

33. On 7 January 2002, 7 March 2002, 7 May 2002, and 5 July 2002 the Cantonal Court extended the applicants' detention for further periods of two months. In each case the procedural decisions extending detention stated the same reasoning as previously mentioned in the procedural decision of 15 November 2001 as acceptable grounds under Articles 183(2)(ii) and 183(2)(iv) of the Code of Criminal Procedure. These procedural decisions did not any further address the specific facts of the case and why such legal provisions were applicable or remained relevant.

34. On 13 May and 7 July 2002 the first applicant submitted appeals against the procedural decisions of 7 May and 5 July 2002, respectively, stating that such procedural decisions extending his detention were "stereotyped" decisions merely quoting the provisions of the Code of Criminal Procedure without giving any legal or factual reasons and without providing evidence as to why continued detention on remand was necessary. On 16 May and 15 July 2002, respectively, the Supreme Court rejected the first applicant's appeals stating that his detention was justified having in mind the seriousness of the crime and quoting the relevant provisions contained in Article 183(2) of the Code of Criminal Procedure. However, considering the latter appeal by the applicant, the Supreme Court accepted part of his appeal that such continued detention could not be ordered by merely considering grounds previously raised by the Prosecution or the lower court, but in the circumstances of the present case felt that sufficient grounds still existed under Article 183(2)(iv) for the applicant's continued detention on remand. In his appeal of 7 July 2002, the first applicant drew the Supreme Court's attention to Article 5(3) of the Convention and the Chamber's decision in the *Buzuk* case (see case no. CH/01/7488, *Vlatko Buzuk*, decision on admissibility and merits of 3 July 2002, paragraphs 98 to 101, Decisions July-December 2002). In rejecting the first applicant's appeal, the Supreme Court declared that the legitimacy of detention on remand could not be examined solely in relation to its length and thereby rejected the argument raised by reference to the *Buzuk* case.

35. On 7 July 2002 the second applicant submitted an appeal against the procedural decision of 5 July 2002 requesting his immediate release from detention. The Supreme Court rejected his appeal on 15 July 2002 on the same grounds as the first applicant's appeal. On 24 July 2002 the second applicant submitted an urgent appeal to the President of the Panel of Judges of the Cantonal Court, the President and Vice-President of the Cantonal Court, the Cantonal Prosecutor and his Deputy, the Federal Prosecutor and the President of the Supreme Court. In his appeal the second applicant requested that all necessary steps be taken in order to conclude the criminal proceedings and further informed the Supreme Court of the proceedings before the Chamber.

B. First instance court proceedings

36. On 7 June 2001 the main trial started at the Cantonal Court. On the same day, defence counsel for the second applicant requested an adjournment until 12 June 2001 in order to prepare a defence to the charges in the indictment. The main trial reconvened on 12 June 2001 and until 15 June 2001 the Court heard statements from the defendants. The trial was again adjourned on 15 June 2001 until 19 June 2001 at the request of a co-defendant. On 19 June 2001 the trial was again adjourned until 22 June 2001 due to "the expiry of working hours". The definition of "working hours" in this respect has not been clarified, but the Chamber understands this to mean that under existing court rules a court shall sit for a specified number of hours per week and that members of that court and staff, both legal and administrative, may have obligations to other cases. Therefore, if the total number of working hours permitted under existing court rules has been exceeded, then an adjournment may legitimately be ordered.

37. The trial was again adjourned on 23 June 2001 until 3 July 2001 due to a request for information submitted by the Cantonal Prosecutor to the Ministry of Interior of the Herzegovina-Neretva Canton. The Chamber has no information as to whether this request was complied with, and if so, the content of the information sought.

38. On 3 July 2001 the Court read out the written statements of the protected witnesses nos. 30 and 31. Thereafter, the trial was postponed until 6 July 2001 whereupon a new trial was ordered due to the death of one of the lay judges of the Panel. The new trial commenced on 10 July 2001.

39. On 12 July 2001 defence counsel for the second applicant failed to appear and the trial was consequently postponed until 17 July 2001. Between 17 and 27 July 2001 the trial was adjourned on two further occasions, although the reasons for this have not been stated. Between 27 July and 19 September 2001 the trial was adjourned on three separate occasions due to objections raised by a co-accused concerning the calling of additional witnesses.

40. On 19 September 2001 the trial was postponed due to the summoning of expert witnesses.

41. On 28 September 2001 the trial was adjourned for an indefinite period following a proposal to disqualify the President of the Panel of Judges of the Cantonal Court, all other judges of the Cantonal Court, the President of the Supreme Court, the Deputy Cantonal Prosecutor and the Federal Prosecutor. The trial reconvened on 19 October 2001. It has not been stated, and it is not apparent from the documents submitted by any of the parties, whether either of the applicants submitted this request for disqualification.

42. On 26 October 2001 the trial was adjourned for reasons unknown to the Chamber.

43. On 8 November 2001 the trial was adjourned due to the Prosecutor being ill. Also on the same day new defence counsel of a co-accused requested an adjournment until 16 November 2001, on the ground that he needed to prepare a defence as he had just joined the proceedings.

44. On 19 November 2001 the first applicant submitted an appeal to the procedural decision of 15 November 2001, by which it was proposed to transfer competence from the Cantonal Court to the Supreme Court. This appeal was rejected on 23 November 2001. On 7 May 2002 the first applicant renewed his appeal and this was rejected by the Supreme Court on 16 May 2002.

45. On 21 November 2001 the trial was adjourned until 3 December 2001 and then again until 12 December 2001 at the request of a co-accused, although the reasons have not been specified to the Chamber.

46. On 12 December 2001 a new trial was ordered due to a change in the composition of the Panel of Judges.[3] The following day, defence counsel of a co-accused submitted a proposal to disqualify all judges of the Cantonal Court. As a result of this proposal, the trial was adjourned until 27 December 2001. On that day, due to the failure to appear of defence counsel for both applicants, the trial was again adjourned until 10 January 2002.

47. Between 10 January 2002 and 13 February 2002 the trial was adjourned on seven separate occasions due to the hearing of various witnesses.[4] Only on one of these occasions the adjournment was at the request of the defence.

48. At the request of the Deputy Cantonal Prosecutor additional hearings were scheduled before the Supreme Court on 10 February and 18 June 2002 in respect of the protected witness no. 30 and on 18 February and 20 June 2002 in respect of the protected witness no. 31.

49. On 13 February 2002 the trial was adjourned until 19 February 2002 as defence counsel for the second applicant was absent due to participating in the World Karate Championship.

50. Between 19 February 2002 and 3 April 2002 the trial was adjourned on seven separate occasions as a result of hearing additional witnesses, reading witness statements and the fact that the case file had not been returned from the Supreme Court on time.

51. On 3 April 2002 the trial was adjourned until 11 April 2002 at the request of the Cantonal Prosecutor in order to obtain additional evidence. The case file was subsequently sent to the Supreme Court and on 11 April 2002, when the trial was scheduled to reconvene, it was established that the case file had once again not been returned from the Supreme Court. The trial was accordingly adjourned until 22 April 2002.

52. On 24 April 2002 the trial was adjourned for an indefinite period following the proposal by an unnamed party to disqualify the President of the Panel of Judges of the Cantonal Court. The trial reconvened on 6 May 2002.

53. Between 7 May 2002 and 21 May 2002 the trial was adjourned on four separate occasions due to the reading of witness statements. On 22 May 2002 the trial was adjourned until 28 May 2002 after hearing witnesses proposed by the second applicant and on 28 May 2002 it was again adjourned until 29 May 2002 due to the non-appearance of defence counsel of three of the defendants.

54. On 29 May and 7 June 2002 the trial was adjourned in order to obtain new evidence and on 12 and 21 June 2002 it was again adjourned due to the case file being submitted to the Supreme Court and the protected witnesses being heard.

55. On 26 and 27 June 2002 the case was adjourned due to the non-appearance of defence counsel for a co-accused.

56. On 3 and 5 July 2002 the trial was adjourned in order to present new evidence and to subpoena documents from the Federation Ministry of Interior.

57. Between 10 and 16 July 2002 the trial was adjourned for reasons unknown to the Chamber.

[3] The change in the composition appears to be due to a change in the lay judges sitting on the Panel. According to domestic court practice lay judges are appointed for a certain term of office and if their term of office expires during a trial a new panel must be appointed resulting in the proceedings being restarted.

[4] The precise reasons as to why an adjournment was required each time a witness was heard have not been clarified. It appears to be standard practice in the Courts of the Federation of Bosnia and Herzegovina.

58. Between 16 and 31 July 2002 the trial was adjourned on five separate occasions in order to hear additional evidence, receive documentation, obtain and secure video evidence and the summoning and hearing of defence witnesses.

59. On 6 August 2002 the trial was adjourned until 20 August 2002 and then again until 23 August 2002 due to the non-appearance of defence counsel of a co-accused.

60. On 23 August 2002 the trial was adjourned until 27 August 2002 in order for the Panel of Judges to rule on the admissibility of evidence, the hearing of witness testimony and to obtain documentation from the Ministry of Interior.

61. On 27 August 2002 the trial was adjourned until 3 September 2002 in order to request the minutes from the hearings conducted by the investigating judge.

62. On 3 September 2002 the trial was adjourned in order to obtain video footage in relation to the protected witness no. 30 from the investigating judge. The trial reconvened on 11 September 2002 for the presentation of the video footage and was thereafter adjourned until 13 September 2002 in order to rule on the admissibility of certain evidence proposed by the parties.

63. On 13 September 2002 the trial was adjourned until 18 September 2002 and then again until 20 September 2002 at the request of a co-accused. On 20 September 2002 the trial was again adjourned until 25 September 2002 at the request of a co-accused.

64. On 25 September 2002 a procedural decision was issued by the Cantonal Court by which the presentation of evidence was concluded. The trial was thereafter adjourned until 3 October 2002 whereby closing speeches would be presented.

65. On 3 October 2002 the Deputy Cantonal Prosecutor gave his closing speech, summarising the facts and requesting the Court to convict the defendants. Thereafter the defendants entered their pleas and statements. At the request of the first applicant and a co-accused, the defence closing speeches were adjourned until 7 October 2002.

66. On 7 October 2002 the applicants and a co-accused were re-examined. The trial was thereafter adjourned until the following day whereupon the parties would give their closing speeches. From 8 October until 7 November 2002 the Court heard the parties' closing speeches. During this period the trial was adjourned on fourteen separate occasions.

67. On 7 November 2002 the trial was concluded and adjourned until 12 November 2002 whereupon the verdict would be delivered.

68. On 12 November 2002 the applicants were acquitted of all charges by the Cantonal Court and released from detention.

69. On 11 February 2003, upon receipt of the written first instance judgment, the Cantonal Prosecutor submitted an appeal against the first instance judgment to the Supreme Court.

RELEVANT DOMESTIC LAW

1. Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 2/99, 15/99, 29/00 and 59/02 hereinafter the "Criminal Code")

70. Article 146 of the Criminal Code provides:

"Terrorism

"(1) Whoever, with the intention of jeopardising the Federation, its constitutional establishment or its highest authorities, kidnaps a person or commits another violent act, causes an explosion, fire or by some other generally dangerous action or by use of generally dangerous means causes danger to life and highly valuable property, shall be punished with a sentence of imprisonment for not less than one year.

"…

"(3) If while committing the act from paragraph 1 of this Article the perpetrator intentionally kills a person, he/she shall be punished with imprisonment of at least ten years; or with long term imprisonment." [5]

2. Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 50/01 and 27/02, hereinafter the "Code of Criminal Procedure"):

71. Article 20 of the Code of Criminal Procedure provides:

"The Supreme Court of the Federation of Bosnia and Herzegovina…and the Cantonal Courts shall try criminal cases within the limits of their jurisdiction with respect to subject matter as defined by the Federal or Cantonal Law."

72. Article 32 of the Code of Criminal Procedure provides:

"(1) A court must be mindful of its jurisdiction as to the subject matter and place, and as soon as it realises that it is not competent, it must declare that it does not have competent jurisdiction, and when the judgment becomes final, it shall refer the case to the competent court.

"(2) If a court finds during a main trial that a lower court is competent to try the case, it shall not turn the case over to that court, but shall itself conduct proceedings and render a judgment.

"(3) Once the indictment has become valid, the court may not announce that it lacks territorial jurisdiction, nor may the parties file an objection based on lack of territorial jurisdiction with respect to place.

"(4) The court which does not have jurisdiction must take those actions in proceedings which performance is required to avert delays."

73. Article 182 of the Code of Criminal Procedure provides:

"(1) Custody may be ordered only under the conditions envisaged in this law.

"(2) The duration of custody must be reduced to the shortest necessary time. It is the duty of all bodies and agencies participating in criminal proceedings and of agencies extending legal aid to proceed with particular urgency if the accused is in custody.

[5] The term "long term imprisonment" is defined under Article 38 of the Criminal Code as between 20 and 40 years imprisonment.

"(3) Throughout the proceedings custody shall be terminated as soon as the grounds on which it was ordered cease to exist."

74. Article 183 of the Code of Criminal Procedure provides:

"(1) Custody shall always be ordered against a person if there is a warranted suspicion that he has committed a crime for which the law prescribes a sentence of long-term imprisonment.[6]

"(2) If there are grounds for suspicion that a person has committed a crime, but the conditions do not exist for mandatory custody, custody may be ordered against that person in the following cases:

(i) if he conceals himself or if other circumstances exist which suggest the strong possibility of flight;

(ii) if there is a warranted fear that he will destroy, hide, alter or falsify evidence or clues important to criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, fellow accused or accessories in terms of concealment;

...

(iv) if the crime is one for which, because of the manner of execution or the consequences of the crime, detention is necessary for the safety of the citizenry. These include crimes envisaged in the Criminal Code of the Federation: terrorism (Article 146)...;

"(3) In the case referred to in paragraph 2, point 2 of this Article, custody shall be terminated as soon as the evidence is obtained for which custody was ordered."

75. Article 184

"(1) Custody shall be ordered by the investigative judge of the competent court.

"(2) Custody shall be ordered in a written decision containing the following: the first and last name of the person being taken into custody, the crime he is charged with, the legal basis for custody, instruction as to the right of appeal, a brief substantiation in which the basis for ordering custody shall be specifically argued, the official seal, and the signature of the judge ordering custody.

"(3) The arrest warrant shall be presented to the person to whom it pertains at the moment when he is apprehended, and no later than within 24 hours from the moment he is deprived of liberty. The time of his deprivation of liberty and the time of presentation of the warrant must be indicated in the record.

"(4) An individual who has been taken into custody may appeal the arrest warrant to the panel of judges (Article 21, paragraph 6) within 24 hours from the time when the warrant was presented. If the person taken into custody is examined for the first time after that period has expired, he may file an appeal at the time of his examination. The appeal, a copy of the transcript of the examination if the person taken into custody has been examined, and the arrest warrant shall be immediately delivered to the panel of judges. The appeal shall not stay execution of the warrant."

76. Article 185 of the Code of Criminal Procedure provides:

"(1) The investigative judge must immediately inform a person who has been deprived of liberty and brought before him of the reasons for depriving him of liberty, that he may engage defence counsel, who may attend his examination, and, if necessary, he shall help him to find defence counsel. He shall warn him of the rights under Article 67 of this Law. If within 24 hours of the date of this communication

[6] The Decision of the Law of Amendments to the Code of the Criminal Procedure which entered into force on 8 November 2001 abolished the measure of compulsory detention by deleting Article 183 paragraph 1 of the Code of Criminal Procedure. Article 183 paragraph 2 is now to be referred to as paragraph 1 (Official Gazette of the Federation of Bosnia and Herzegovina no. 50/01). However, as the present case concerns a period of time before and after the entering into force of the amending law, for clarity the provisions contained in Article 183 have been referred to throughout this decision with the previous numeration.

a person taken into custody does not provide for the presence of defence counsel, the investigative judge must immediately examine that person."

77. Article 187 of the Code of Criminal Procedure provides:

"(1) Authorised officials of law enforcement agencies may deprive of liberty a person if any of the reasons envisaged in Article 183 of this Law exists, but they must bring that person without delay and no later than within 24 hours before the competent investigating magistrate or the investigating magistrate of the lower court in whose jurisdiction the crime was committed if the precincts of that court can be reached more quickly. When the authorised official of the law enforcement agency brings the person before the investigating magistrate, he shall inform him of the reasons for and time of arrest.

"(3) If the person deprived of liberty is not brought to an investigating magistrate in the period specified in paragraph 1 of this Article, he shall be set free."

78. Article 188 of the Code of Criminal Procedure provides:

"(1) On the basis of the investigative judge's decision, the accused may not be held in pre-trial custody more than 1 month from the date of his apprehension. At the end of that period the accused may be kept in custody only on the basis of a decision to extend pre-trial custody.

"(2) Pre-trial custody may be extended a maximum of 2 months under a decision of the panel of judges (Article 21, paragraph 6). An appeal is permitted against the panel's decision, but the appeal does not stay execution of the decision. If proceedings are conducted for a crime carrying a prison sentence of more than 5 years or a more severe penalty, a panel of the Supreme Court of the Federation may for important reasons extend pre-trial custody by not more than another 3 months. The decision to extend pre-trial custody shall be made on the reasoned recommendation of the investigative judge.

"(3) If a bill of indictment is not brought before expiration of the period referred to in paragraph 2 of this Article, the accused shall be released."

79. Article 190 of the Code of Criminal Procedure provides:

"(1) Once the bill of indictment has been presented to the court and until the end of the main trial custody may be ordered or terminated only by a decision of the panel of judges after hearing the competent prosecutor if proceedings are being conducted on his petition.

"(2) At the end of 2 months from the date when the last decision on custody became valid, even in the absence of motions by the parties, the panel shall examine whether the grounds still exist for custody and shall make a decision to extend or terminate custody.

"(3) An appeal against the decision referred to in paragraphs 1 and 2 of this Article shall not stay execution of the decision.

"(4) An appeal is not permitted against the decision of the panel which rejects a proposal to order or to terminate pre-trial custody."

80. Article 353 of the Code of Criminal Procedure provides:

"(1) Authorised persons may file an appeal against a judgment rendered in the first instance within 15 days from the date when the copy of the verdict was delivered.

"(2) An appeal filed on time by an authorised person shall stay execution of the judgment."

81. Chapter XXI, Part IV of the Code of Criminal Procedure defines the circumstances for postponement and adjournments of the main trial:

> Article 299
>
> "(1) Aside from the cases specifically provided for in this Law, the main trial shall be postponed by a decision of the panel if new evidence needs to be obtained,...if there are other impediments to the effective conduct of the main trial.
>
> "(2) The decision adjourning the main trial shall when possible fix the day and hour when the main trial will resume. In that same decision the panel may specify that evidence be obtained which could be lost through the effect of time.
>
> "(3) No appeal is permitted against the decision referred to in paragraph 2 of this Article."
>
> Article 300
>
> "(1) A main trial which is adjourned must commence anew if the composition of the panel has changed, but after the principals have been examined, the panel may decide that in such a case the witnesses and experts shall not be examined again and that a new on-the-spot inquest will not be performed again, but that the testimony of witnesses and experts given in the previous main trial shall be read or the record of the on-the-spot inquest will be read.
>
> "(2) If a main trial which was adjourned is held before the same panel, it shall be resumed, and the presiding judge shall briefly summarise the course of the previous main trial, but even in that case the panel may order that the main trial recommence from the beginning.
>
> "(3) If the adjournment has lasted longer than 1 month, or if the main trial is being held before another presiding judge, the main trial must begin from the beginning, and all evidence must again be presented."
>
> Article 301
>
> "(1) Aside from the cases specifically provided for in this Law, the presiding judge may declare an adjournment of the main trial for rest or because the working hours have passed or so that certain evidence may quickly be obtained, or for the purpose of preparing prosecution or defence.
>
> "(2) A main trial which has been adjourned shall always resume before the same panel.
>
> "(3) If a main trial may not be resumed before the same panel, or if the adjournment of the main trial has lasted longer than 8 days, the procedure called for in the provisions of Article 300 of this Law shall be followed."

3. Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 20/01):[7]

82. Article 3 provides:

> "...
>
> "New paragraphs 2, 3 and 4 shall be added after paragraph 1 as follows:
>
> > "The Supreme Court is responsible for conducting investigations into, and first instance trials of, perpetrators of the following criminal acts, also as required by legal remedies:
> >
> > > "terrorism under Article 146 of the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, nos. 43/98, 2/99 and 15/99);"

[7] The amendments referred to in the Chamber's decision, published in the Official Gazette of the Federation of Bosnia and Herzegovina no. 20/01 on 19 May 2001, entered into force 8 days after publication on 27 May 2001.

"...

83. Article 7 provides:

"This Law shall enter into force eight days from the date of its publication in the Official Gazette of the Federation of BiH."

4. Law on Special Witness Identity Protection in Criminal Proceedings in the Federation (Official Gazette of the Federation of Bosnia and Herzegovina nos. 33/99 and 9/01):

84. Article 1 provides:

"This Law sets forth the rules for a witness hearing under special conditions, aiming for complete protection of life, body, and freedom of a person and his/her close family in criminal proceedings in which a sentence of long-term imprisonment can be issued, or in any other criminal proceedings for which a panel of judges of the Supreme Court of the Federation of Bosnia and Herzegovina...as per Article 2, paragraph 1 of this Law, deems appropriate."

85. Article 2 provides:

"(1) When requested by the court in charge of the case, or an authorised prosecutor, or an accused and his/her defence lawyer, a witness can be heard by a Federation Supreme Court Panel of Judges, comprised of three Supreme Court judges.

"(2) The request to hear a witness, as outlined in the previous paragraph, is to be submitted to the President of the Supreme Court. The request shall contain data on a person's identity who is to be heard as a witness; the criminal case to which the witness-hearing is to serve; facts clearly indicating danger to life, body or freedom of the person and his/her close relatives in the case of testifying that calls for a necessary application of witness protection envisioned by this Law; and circumstances about which the witness is to be examined.

"(3) The office which submits the request as per paragraph 1 of this Article, shall submit it in a closed envelope, clearly indicating that the envelope contains a request to hear a witness as defined by this Law, and forward it to the President of the court in charge of the criminal case, or that should be in charge of the criminal case once it starts. The President of this court shall then without delay, and without getting familiar with what is in the envelope, forward this envelope to the President of the Federation Supreme Court.

"(4) The organs of internal affairs can inform a prosecutor, who has jurisdiction, about the need for the special identity protection of a person who is to be heard as a witness, and the need for protection as stipulated by this Law."

86. Article 4 provides:

"(1) Based on the facts outlined in the request for witness-hearing and the assessment of the criminal case documents in which the witness-hearing is requested, the Panel shall first decide whether there are circumstances justifying a witness-hearing as specified in this Law.

"(2) If the Panel deems the circumstances as unjustified, then it shall inform the requester about the decision through the President of the Court, as per Article 2, paragraph 4 of this Law.

"(3) If the Panel decides that the circumstances justify the hearing of a witness in accordance with this Law, then it shall schedule the date, time and place of the hearing.

"(4) In case the members of the Panel disagree about the circumstances justifying the hearing of the witness as per this Law, the members of the Council shall vote on this, and the majority vote shall be implemented.

"(5) With the approval of the Supreme Court President, a witness can be heard outside of the Supreme Court building."

87. Article 7 provides:

> "After becoming familiar with a witness's testimony, the court can, either pursuing an official duty or following the authorised prosecutor's suggestion, or the suggestion of the defence and the accused, propose to the Federation Supreme Court to hear a witness on additional questions or to clarify previously given testimony. In this case, the case documents shall be given back to the Supreme Court Panel, which will hear the witness within 15 days from the date when the request for an additional hearing was received, after which the case documents and hearing record will be promptly forwarded back to the court in charge of the case."

88. Article 8 provides:

> "When the witness is heard as prescribed by this Law, the judgment cannot be exclusively based on the witness testimony only."

IV. COMPLAINTS

89. The applicants specifically complain that their detention, both during the pre-trial stage and on remand, was unlawful under Article 5(1)(c) of the Convention, that the length of their overall detention exceeded the reasonable time requirement under Article 5(3) of the Convention and that the judge whom they were brought before to review their continued detention was not a judge within the meaning of Article 5(3) of the Convention as he had no power to release them. Both applicants also complain that their right to be informed promptly of the reasons for their arrest and any charges against them under Article 5(2) of the Convention and the right to be informed promptly of the nature and cause of the accusation against them under Article 6(3)(a) of the Convention have been violated. Both applicants further complain that they did not receive a fair trial within a reasonable time as guaranteed under Article 6(1) of the Convention and that the presumption of innocence under Article 6(2) of the Convention was not respected. The applicants also complain that the use of the protected witnesses against them prevented them from receiving a fair trial in violation of Article 6(1) taken in conjunction with Article 6(3)(d) of the Convention. The applicants complain that the Cantonal Court exceeded its jurisdiction under the Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina. The applicants also complain that they have been deprived of the right to an effective remedy as guaranteed under Article 13 of the Convention. Additionally, the applicants complain that the respondent Party violated their rights as guaranteed under Articles 9(3) and 9(4) of the International Covenant on Civil and Political Rights. Finally, they allege that they have been discriminated against because of their Croat origin in the enjoyment of various rights.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. Admissibility

90. As to the admissibility of the applications, the respondent Party states that the applicants have failed to exhaust domestic remedies. The respondent Party states that the domestic courts issued a total of twelve procedural decisions concerning the applicants' detention. However, the applicants only submitted three appeals, thus, according to the respondent Party, failing to fully exhaust available domestic remedies in this respect.

2. Merits

a. Article 5 of the Convention

91. The respondent Party states that the applicants were arrested and detained in accordance with a procedure prescribed by domestic law in that a "warranted suspicion" existed.

92. The respondent Party maintains that the applicants were charged with acts of terrorism and as such were placed in a special category. In this regard, the respondent Party states that police officials will be justified in arresting and detaining suspected terrorists on the basis of reliable information that cannot be disclosed to the accused or the court to substantiate the indictment without endangering the source of such information (see e.g., Eur. Court HR, *Fox, Campbell & Hartley v. United Kingdom*, judgment of 30 August 1990, Series A no. 182, paragraph 32). The respondent Party accepts that even in such circumstances the prosecuting authorities must bring the accused before a court and show an intention to bring the accused to trial. However, the respondent Party maintains that this has been respected.

93. The respondent Party maintains that at the date of issuance of the procedural decision of 6 April 2000, by which the Cantonal Court ordered the detention of the applicants, both were considered "fugitives" and have therefore contributed to the delay in the proceedings.

94. The respondent Party states that the applicants were arrested and initially detained in accordance with Article 183(1)(ii) and (iv) of the Code of Criminal Procedure (see paragraph 74 above) and according to Article 188(1) of the Code of Criminal Procedure (see paragraph 78 above) the applicants' detention could be ordered for a period of one month. Subsequently, the applicants' detention was extended for a further period of 2 months by the Panel of Judges of the Cantonal Court in accordance with Article 188(2) of the Code of Criminal Procedure (see paragraph 78 above) and thereafter for a further period of three months by the Supreme Court in accordance with the same provision. Article 188(3) of the Code of Criminal Procedure (see paragraph 78 above) states that after the expiration of this period (six months in total) a bill of indictment must be filed with the competent court and should the prosecuting authorities fail to do so, the accused shall be released. In the present cases a bill of indictment was filed on 9 March 2001 within the six-month time limit. The respondent Party declares that such provisions are in accordance with lawful detention under Article 5(1)(c) and the strict time limit of six months satisfies the requirement of reasonable time under Article 5(3) of the Convention.

95. The respondent Party maintains that the applicants, upon their arrest, were brought promptly before a judge in accordance with Article 5(3) of the Convention and that the judge they were brought before possessed the necessary characteristics of "a judge or other officer authorised by law to exercise judicial power" within the meaning of the same provision. The respondent Party recalls that the Chamber has, in past decisions, noted that in applying the former Article 183(1) of the Code of Criminal Procedure a judge cannot be considered a "a judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5(3) of the Convention, as he has no discretion to release the applicant once he establishes that there is a warranted suspicion that an individual had committed the offence with which he was charged. Nonetheless, the respondent Party points out that the applicants were only detained under this provision until 15 November 2001, when the former High Representative issued the Decision Amending the Code of Criminal Procedure. This amendment came into force on 8 November 2001 and the applicants' detention was extended on 15 November 2001 under the former paragraph 2, concerning security of citizens and potential interference with witnesses. The respondent Party maintains that these reasons existed before the entry into force of the High Representative's decision, even if they had not been formally stated.

96. Concerning the reasonable time criteria under Article 5(3) of the Convention, according to the respondent Party this concerns the period from the applicants' arrest until the filing of the bill of indictment. Thereafter, according to the respondent Party, under Article 190 of the Code of Criminal Procedure (see paragraph 79) there is no limitation on the length of time an individual is detained and it may last up until the end of the main trial. Additionally, according to the practice of the European Court of Human Rights, provided relevant and sufficient reasons have been given and the respondent Party exercised due diligence, a violation will not arise. In the present case, the respondent Party maintains its position that the domestic courts acted in accordance with the Convention on the grounds of public safety and risk of intimidating or interfering with witnesses.

b. Article 6 of the Convention

97. The respondent Party points out that the reasonable time criteria under Article 6(1) of the Convention overlaps with Article 5(3) of the Convention. However, it states that the relevant time period for the application of Article 6(1) starts to run from the moment of arrest, 10 and 17 September 2000, respectively, and, at the time of its submissions, this period had not ceased as proceedings remained pending before the Cantonal Court. The respondent Party notes that in assessing the reasonableness of the length of trial, the Chamber must consider the complexity of the case, the number of witnesses to be heard, special needs for expertise, the conduct of the applicants and the conduct of the domestic authorities. The respondent Party points out that the complexity of the subject matter is indisputable. Furthermore, it was necessary to hear approximately thirty witnesses of fact, seven expert witnesses, review a large amount of evidence as well as several written statements being read out. The respondent Party states that the main trial was adjourned a total of eighty-five times between 7 June 2001 and 12 November 2002. On twenty separate occasions this was due to the non-appearance of defence counsel and on a number of other occasions due to the behaviour or request of defence counsel. The respondent Party maintains that the domestic authorities acted diligently at all times and did not obstruct the proceedings as stated by the applicants.

98. As to the issue of competence of the Cantonal Court, the respondent Party submits that Article 3 of the Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina inserted a new paragraph 2 to the Law on the Supreme Court of the Federation of Bosnia changing the competency of the court in certain cases, including offences of terrorism. However, that Law entered into force on 17 August 1999 and the offence for which the applicants were charged was committed on 16 March 1999. Furthermore, according to Article 3 of the Law in cases where procedure has been initiated before the Cantonal Courts prior to 17 August 1999, consideration of the case shall continue before that court and under Article 7 the Law shall not have retrospective effect. Accordingly, the Cantonal Court had competent jurisdiction to try the applicants.

99. As to the issue of being informed promptly of the charges under Article 6(3)(a) the respondent Party maintains that both applicants were promptly informed of the charges against them and an indictment was filed within the prescribed time limit thus satisfying the requirement of Article 6(3)(a) of the Convention.

100. The respondent Party has not commented on the procedural fairness of the applicants' trial.

101. In its written observations of 3 January 2002, the respondent Party informed the Chamber on the procedure adopted for the use of the protected witnesses. The respondent Party submitted that the request to hear the protected witnesses was submitted by the investigative judge to the Supreme Court on 15 January 2001. This request was received by the Supreme Court on 16 February 2001. It was concluded by the Supreme Court that the legal conditions were met for hearing such evidence and the President of the Supreme Court designated to the witnesses the anonymous identity of protected witness no. 30 and protected witness no. 31. Special measures were taken by the domestic police authorities and the UN International Police Task Force for the protection of their identities and the protected witness no. 30 was deemed to require physical police protection. The President of the Panel of Judges of the Supreme Court, the Panel Judges, and the recording secretary of the Supreme Court, were informed of the identity of the protected witnesses during scheduled hearings on 19 and 20 February 2001, respectively. After the initial hearings, the Cantonal Court was informed of the contents of the statements and thereafter the Deputy Cantonal Prosecutor requested that additional questions be put to the protected witnesses. The respondent Party states that the applicants were also invited to put specific questions to the protected witnesses. The Supreme Court scheduled additional hearings on 10 February and 18 June 2002 in respect of the protected witness no. 30 and on 18 February and 20 June 2002 in respect of the protected witness no. 31. On these occasions the Panel of the Supreme Court was composed of different judges than on 19 and 20 February 2001. The respondent Party confirms that both protected witnesses gave full answers to all questions put to them.

c. Article 13 of the Convention

102. The respondent Party states that the allegation under Article 13 is ill-founded. The requirement of an effective remedy is not based upon success or failure of appeals, but requires that an effective appeal system be in place. In the circumstances of the present case there cannot be a violation of the provision.

B. The applicants

103. The applicants maintain that the respondent Party has violated domestic law and Articles 5 and 6 of the Convention and that the length of their detention and trial exceeded all limits of reasonableness. The applicants submit that the investigating and prosecuting authorities failed to respect the time limits for reviewing detention in their cases and violated the presumption of innocence guaranteed under Article 3 of the Code of Criminal Procedure and Article 6(2) of the Convention.

104. In particular the applicants maintain that the Cantonal Court exceeded its jurisdiction in trying them and that the domestic criminal proceedings should have been transferred to the Supreme Court as provided by the Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina, violating Article 14(1) of the International Covenant on Civil and Political Rights and Articles 20 and 32 of the Code of Criminal Procedure.

105. The first applicant complains that the request to open an investigation was not filed by the Cantonal Prosecutor on 6 April 2000 as stated by the respondent Party, but maintains that on examination of the court file it is evident that such a request was filed on 21 September 2000.

106. The first applicant denies that he was "on the run" and insists that neither the investigating nor the prosecuting authorities made any attempt to contact him until his arrest on 10 September 2000. The first applicant states that the fact that he was arrested during the middle of the night whilst asleep at his family home seems to negate the theory that he was "on the run". During the arrest he maintains that he was beaten by police officers, a black bag placed over his head. Subsequently he was transported by helicopter to Mostar airport, whereupon he was initially interrogated. He was then taken by helicopter, again with a black bag over his head, to Sarajevo, whereupon he was finally informed of the reasons for his arrest.

107. The second applicant asserts that the respondent Party's statement that he was "on the run" is manifestly untrue as at that stage he remained under the employment of the State Border Control Service and that medical documentation from the Ministry of Interior will substantiate his claim that he was on authorised paid sick leave. Additionally, the second applicant submits that due to the fact he was employed by the Federation Ministry of Interior, as Jozo Leutar's driver, and was in fact injured in the explosion, it is illogical that he should be considered a co-conspirator. Furthermore, the statement concerning the number of adjournments is misleading, and in parts, untrue. The second applicant's legal representative was absent on 2 separate occasions and for valid reasons.

108. Both applicants have, at all stages in the proceedings, vehemently attacked the significance placed on the testimony of the protected witnesses. The applicants complain that by withholding vital evidence from the defence and the court and by assembling the entire prosecution case on such evidence, the respondent Party violated the principle of equality of arms, thus preventing them from receiving a fair trial as guaranteed under Article 6(1) of the Convention.

109. The applicants both allege that the presumption of innocence was not respected thus violating Article 3 of the Code of Criminal Procedure and Article 6(2) of the Convention.

110. The applicants maintain their complaints, despite their acquittal, and contend that the criminal proceedings against them have not been concluded and their acquittal has not sufficiently remedied the violations.

VI. OPINION OF THE CHAMBER

A. Admissibility

111. Before considering the merits of the applications the Chamber must first decide whether they are admissible, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted and whether the applications have been filed within six months from such date on which the final decision was taken. Article VIII(2)(c) states that the Chamber shall dismiss any application it considers incompatible with the Agreement, manifestly ill-founded or an abuse of the right to petition.

1. Complaints relating to fair trial

112. The Chamber notes that the majority of the applicants' complaints in relation to their right to a fair trial relate to the domestic courts' assessment of the facts pertaining to their case and alleged wrongful application of the law. The applicants further complain that both the Cantonal Court and the Supreme Court wrongly interpreted the Law Amending the Law on the Supreme Court of the Federation of Bosnia and Herzegovina (see paragraphs 82 to 83 above). The applicants state that under the amended Article 3 of the Law, the offence of terrorism under Article 146 of the Code of Criminal Procedure shall be tried before the Supreme Court. Accordingly, jurisdiction should have been transferred to the Supreme Court in the first instance. Additionally, the applicants complain that the use of the protected witnesses prevented them from receiving a fair trial as guaranteed under Article 6(1) of the Convention taken in conjunction with Article 6(3)(d). In all these respects, the Chamber notes that the applicants' complaints are premature as the proceedings are still pending before the Supreme Court. The applicants can raise all these complaints before the Supreme Court. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the applications inadmissible in this respect.

113. However, the fact that their appeal trial is pending before the Supreme Court of the Federation will not prevent the Chamber from examining the applicants' complaints in relation to the length of the proceedings under Article 6(1) of the Convention (see e.g., case no. CH/00/4295, *Osmanagić*, decision on admissibility and merits of 5 March 2002, Decisions January-June 2002, paragraphs 49 to 57) and the right to be informed promptly of the charges against them in a language that they understand and in sufficient detail as guaranteed under Article 6(3)(a) of the Convention.

2. Complaints relating to detention

114. The respondent Party submits that the applicants have failed to exhaust the domestic remedies available to them. It states that the applicants had the right to submit appeals to all twelve procedural decisions extending their detention, but only submitted appeals against three of them.

115. The respondent Party has stated that the applicants' detention, up until the issuance of its procedural decision of 15 November 2001 in accordance with the decision of the High Representative of 7 November 2001 (see paragraphs 30 and 74 and footnote 6 above), was governed by the former Article 183(1) of the Code of Criminal Procedure by which detention was mandatory once a reasonable suspicion had been shown. As the Chamber has established in the *Buzuk* case (see case no. CH/01/7488, *Vlatko Buzuk*, decision on admissibility and merits of 3 July 2002, paragraphs 98 to 101, Decisions July-December 2002) this provision removed judicial discretion on review of detention. The domestic courts were obliged to apply a legal provision that was incompatible with the Convention. The Chamber therefore finds that the applicants could not be expected to submit appeal after appeal where there was no possibility of success for the period up until the issuance of the procedural decision of 15 November 2001. Accordingly, the Chamber will not declare the applications inadmissible on the ground of failure to exhaust domestic remedies in relation to detention for the period up until 15 November 2001.

116. For the period subsequent to the issuance of the procedural decision of 15 November 2001, the Chamber notes that both applicants submitted a number of appeals challenging the grounds given by the domestic courts (see paragraphs 32 to 35 above). The Chamber takes note of the respondent Party's objection that the applicants failed to appeal every procedural decision extending their detention, but recalls from its jurisprudence that Article VIII(2)(a) requires applicants to make "normal use" of available remedies that are "likely to be adequate and effective". The Chamber notes that those procedural decisions extending the applicants' detention which the applicants failed to appeal restated one or several of the grounds for detention on remand that the Supreme Court, deciding on the applicants' previous appeals, had found to be applicable to the applicants. Thus, in the absence of new facts that could have moved the Supreme Court to reconsider its decision, the applicants had no reasonable prospects of being more successful by appealing every single decision extending their detention on remand. On this ground, the Chamber finds that the applicants made "normal use" of available remedies that are "likely to be adequate and effective" in respect of their detention.

117. Accordingly, the Chamber does not consider that the fact that the applicants failed to appeal some of the procedural decisions for the period subsequent to 15 November 2001 precludes it under Article VIII(2)(a) of the Agreement from examining these periods of detention on the merits.

3. Complaints of discrimination in the enjoyment of rights under the International Covenant on Civil and Political Rights

118. The applicants have alleged that they have been discriminated against because of their Croat origin in the enjoyment of their rights under Articles 9(3) and 9(4) of the International Covenant on Civil and Political Rights. However, the Chamber finds that the facts of this case do not indicate that either applicant has been the victim of discrimination on any of the grounds set forth in Article II(2)(b) of the Agreement. It follows that the applications in respect of discrimination are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement and must therefore be rejected in that respect.

4. Complaints of inhuman and degrading treatment

119. The first applicant complains that when he was arrested he was subjected to physical and mental ill-treatment, thus amounting to inhuman or degrading treatment within the meaning of Article 3 of the Convention. He submits that he was beaten by officers with the use of a gun during his arrest at home in front of members of his family. He states that he was again physically and mentally assaulted during his interrogation at Mostar airport in order to extract a confession and during his helicopter flight from Mostar to Sarajevo he was threatened with being thrown out of the travelling helicopter if he did not give a full confession. However, it cannot be seen from the case file that the applicant raised this complaint before the courts or any other domestic body prior to submitting his application to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective domestic remedies in this respect. The Chamber therefore decides to declare the application of the first applicant inadmissible in respect of Article 3 of the Convention.

5. Presumption of innocence and complaints relating to adverse publicity

120. Both applicants complain generally that the conduct of the domestic and international authorities violated the presumption of innocence as guaranteed under Article 6(2) of the Convention. Firstly, the applicants complain that the adverse media coverage of their case generated an atmosphere of hostility and therefore prejudiced the procedural fairness of the domestic proceedings. Secondly, the applicants complain that a number of statements issued by the domestic authorities prejudged their case. Finally, the applicants complain that members of the international community adopted a stance during the investigative and pre-trial stage of the domestic proceedings that amounted to a formal declaration of their guilt.

121. Article 6 of the Convention provides, insofar as is relevant, as follows:

> "(1) In the determination…of any criminal charge against him, everyone is entitled to a fair and public hearing…by an independent and impartial tribunal… Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial…to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> "(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

122. The applicants' first complaint is that the pre-trial publicity of their case generated by the media violated their right to receive a fair trial as guaranteed under Article 6(1) of the Convention taken together with Article 6(2). The Chamber notes that in criminal cases that attract public attention, a virulent press campaign and public comment, which creates an atmosphere of animosity, can prejudice a fair trial (see Eur. Commission HR, *Berns & Ewert v. Luxembourg*, decision of 6 March 1991, Decisions & Reports 68, p.137 at p.161). However, it must also be noted that certain press comment on a trial is inevitable and a judge is expected to distance himself from press comment and try the case according to the evidence. The Chamber further notes that pre-trial publicity raises a number of issues under the Convention, particularly the inter-relationship between the general right to a fair trial under Article 6(1) and the presumption of innocence under Article 6(2). However, any statement must be balanced with the right to freedom of expression under Article 10 of the Convention and the general right of the authorities to inform the public of criminal investigations. In *Worms v. Austria* (Eur. Court HR, judgment of 29 August 1997, Reports 1997-V, paragraph 50) the European Court held that the courts cannot operate in a vacuum and that reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6(1) of the Convention that hearings be public. Therefore, the Chamber finds that the applications in this respect do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that in this respect the applications are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the applications inadmissible insofar as the applicants complain about the media coverage of their trial.

123. The applicants complain that domestic authorities issued a number of public statements that prejudged their case amounting to a formal declaration of their guilt thus violating Article 6(2) of the Convention. However, the applicants have not pointed to any specific statement. It follows that in this respect the applications are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the applications inadmissible in this respect, too.

124. Finally, the applicants complain that certain members of the international community acted irresponsibly by commenting publicly on the domestic proceedings and that such comment violated the presumption of innocence. However, the Chamber notes that the applicants have not provided any indication that the Federation of Bosnia and Herzegovina is in any way responsible for the statements complained of, nor can the Chamber on its own motion find any such evidence. The Chamber finds that the applicants' complaint in this respect does not concern an interference with their rights under the Agreement by the authorities of any of the signatories to the Agreement. It follows that, in this respect, the applications are incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the applications inadmissible in this respect, too.

6. Conclusion as to admissibility

125. The Chamber finds that no other ground for declaring the applications inadmissible has been established. Accordingly, the Chamber declares the applications under Articles 5(1)(c), 5(2), 5(3), 6(1), in relation to the reasonable time requirement, and 6(3)(a) of the Convention admissible, while it declares the remainder of the applications inadmissible.

B. Merits

126. Under Article XI of the Agreement the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention.

1. Article 5(1) of the Convention

127. Article 5(1) of the Convention provides as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> "...
>
> "(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

128. The applicants complain that the entirety of their detention from their arrest on 10 and 17 September 2000, respectively, until their acquittal on 12 November 2002 was not in accordance with a procedure prescribed by domestic law and that there was no "reasonable suspicion" on which to base their arrest and detention.

129. In determining the lawfulness of detention, the Chamber must first examine whether domestic legal provisions were followed and whether such provisions are compatible with the Convention, and secondly, whether such detention was based upon a reasonable suspicion within the meaning of Article 5 of the Convention.

a. Lawfulness of detention

130. The Chamber recalls that in examining the lawfulness of detention consideration must be given to whether the detention conforms with the substantive and procedural rules of domestic law and, even if in compliance with domestic law, whether detention was nevertheless arbitrary (Eur. Court HR, *Kemmache v. France (No. 3)*, judgment of 24 November 1994, Series A no. 296-C, paragraphs 36-37).

131. The respondent Party states that domestic law was respected at all times and the applicants' detention was governed by Article 183 of the Code of Criminal Procedure during the pre-trial stage, and upon the filing of a bill of indictment, their detention was governed by Article 190 of the Code of Criminal Procedure.

132. The Chamber notes that under Article 190 of the Code of Criminal Procedure (see paragraph 79 above), once a bill of indictment has been filed, detention may only be extended or terminated by a decision of the Panel of Judges of the Cantonal Court (paragraph 1) and at the expiry of the two month period from which the last decision was taken by the Panel of Judges, it must review whether grounds still exist for continued detention. The Chamber notes that a bill of indictment was filed on 9 March 2001 and that the Panel of Judges, under whose care the applicants' case remained, issued procedural decisions extending the applicants' detention on remand at two month intervals on the expiry on the date from which the last decision was taken by the Panel of Judges. Therefore, during the period of 9 March 2001 to 12 November 2002, the applicants' detention was "in accordance with a procedure prescribed by law". The Chamber finds that for the period under consideration the applicants' detention was in accordance with a procedure prescribed by domestic law.

b. Reasonable suspicion

133. The applicants allege that their arrest and detention was "unlawful" as no reasonable suspicion existed. The respondent Party states, without going into the factual assessment, that a reasonable suspicion existed that the applicants had committed the offence with which they were charged and that their arrest was necessary to bring them before the competent legal authorities in accordance with Article 5(1)(c) of the Convention and Article 183 of the Code of Criminal Procedure.

134. On examination of the procedural decision of 6 April 2000, by which the applicants' arrest and detention was ordered, the Chamber notes that the domestic authorities based this upon a "reasonable suspicion" existing, and that as the applicants were fugitives their arrest was necessary to bring them before the competent legal authority.

135. The Chamber recalls that Article 5(1)(c) of the Convention permits detention on "reasonable suspicion" of a person having committed a criminal offence or to prevent a person from fleeing the jurisdiction after having committed an offence for the purpose of bringing the individual before the competent legal authority. It is not in dispute that the intention was to bring the applicants before the "competent legal authority". However, what amounts to a "reasonable suspicion" depends upon the facts of the case judged at the time of arrest.

136. The respondent Party has stated that in cases of terrorism a different standard should be applied. The Chamber recalls that in *Boudella & Others* (see case nos. CH/02/8679 et al., *Boudellaa & Others*, decision on admissibility and merits of 3 September 2002, paragraph 212) it held:

> "…the case law of the European Court of Human Rights has allowed a wider margin of appreciation in the manner of the application of Article 5 where issues arise relating to terrorism, as long as the essence of the safeguard provided for by subparagraph (c) is left intact. In the case *Fox, Campbell and Hartley* (Eur. Court HR, judgment of 30 August 1990, Series A no. 182, pages 16-17, paragraph 32), the European Court stated:
>
> > The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1(c). The Court agrees … that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances.
> >
> > In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including information from secret sources. Further, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge.
> >
> > … [T]he "reasonableness" of the suspicion justifying such arrests cannot always be judged according to the same standards as are applied in dealing with conventional crime. Nevertheless, the exigencies of dealing with terrorist crime cannot justify stretching the notion of "reasonableness" to the point where the essence of the safeguard secured by Article 5 § 1(c) is impaired…."

137. Accordingly, the domestic authorities will not be absolved from considering whether a reasonable suspicion existed at the time of making the arrest merely due to the fact that the committed offence was one of terrorism. Additionally, the domestic authorities will not be absolved from assessing the reasonableness merely because the offence under domestic law stipulates obligatory pre-trial detention. In this respect, the Chamber must assess the facts before the domestic authorities at the time of making the arrests, whether there existed such a reasonable suspicion.

138. The Chamber recalls that the test of "reasonable suspicion" under Article 5(1)(c) of the Convention requires the domestic authorities to consider, at the time the arrest is made, the existence of facts or information which would satisfy an objective observer that the person concerned *may* have committed the offence. Accordingly, the object of police questioning at this stage is to confirm or dispel reasons for the arrest and therefore the threshold is relatively low at this early stage. In this respect, the Chamber is satisfied that at the time of the applicants' arrest, a reasonable suspicion existed that justified their initial detention.

139. The Chamber further notes that the applicants were detained for a long period on the ground of a reasonable suspicion. It would seem that whilst such grounds are sufficiently adequate during the investigative stage, they may cease to be so after the passage of time. However, the Chamber recalls, as was stated in *De Jong, Baljet & Van Den Brink v. Netherlands* (Eur. Court HR, judgment of 22 May 1984, Series A no. 77, paragraph 44), that the question of whether detention remains reasonable after a certain lapse of time is not covered by Article 5(1)(c) but by Article 5(3) (see also Eur. Court HR, *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, paragraph 35).

140. There has therefore been no violation of Article 5(1)(c) of the Convention in this respect.

2. Article 5(2) of the Convention

141. The applicants complain that their right to be informed promptly of the reasons for their arrest and any charges against them has been violated as guaranteed under Article 5(2) of the Convention.

142. Article 5(2) of the Convention provides as follows:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

143. The Chamber recalls that in *Fox, Campbell and Hartley v. United Kingdom* (Eur. Court HR, judgment of 30 August 1990, Series A no. 182, paragraph 40) the European Court interpreted the requirement of Article 5(2) as meaning that any individual upon arrest must be told:

> "…in simple, non-technical language, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness."

144. In the present case, the applicants were arrested on 10 and 17 September 2000, respectively, and on the day of arrest brought before the investigative judge of the Cantonal Court in accordance with Article 187 of the Code of Criminal Procedure (see paragraph 77 above). It was at this stage that the applicants were informed of the reasons for their arrest and the details of the investigation against them.

145. The first applicant complains that he was not informed of the reasons for his arrest until his arrival in Sarajevo. However, following *De Wilde, Ooms and Versyp v. Netherlands* (Eur. Court HR, judgment of 18 June 1971, Series A no. 12, paragraph 71) it is not a requirement of Article 5(2) that information be given at the moment of arrest as long as it is given within a sufficiently brief period following arrest.[8] The Chamber recalls that the requirement under Article 5(2) of the Convention is less strict and differs from the similar requirement under Article 9(2) of the International Covenant on Civil and Political Rights which states that such information must be given at the time of arrest. However, the Chamber notes that provided the reasons for the arrest were given during the course of questioning following arrest, or within a sufficiently brief period following arrest, then the obligation under Article 5(2) is fulfilled.

[8] The French text of Article 5(2) defines "promptness" as "*le plus court delai*", meaning in the shortest delay, which is not necessarily at the first available opportunity, but shortly thereafter.

146. The second applicant does not dispute that he was informed of the reasons for his arrest at some point after his arrest, but appears to rely on Article 5(2) in that insufficient reasons were given.

147. As to the sufficiency of information given, in *Fox, Campbell and Hartley* (see the above-mentioned *Fox, Campbell and Hartley v. UK* decision, paragraphs 40 to 41) the European Court established that the information given at this preliminary stage does not need to be a full outline of the prosecution case. However, the mere categorisation of the offence or the domestic legal definition will not normally suffice. If the arrest relates to a specific offence, then the accused must be furnished with details of the offence, its statutory definition and the accused should be asked whether he admits or denies the offence. The Chamber notes, in this respect, that the applicants were informed promptly of the details of the offence in a manner that satisfies the meaning of "essential legal and factual grounds" within the meaning of Article 5(2).

148. In conclusion to the alleged violation of Article 5(2) of the Convention, the Chamber finds that the applicants were furnished with the relevant information to challenge the lawfulness of their detention. Therefore, the Chamber finds that for the period from the applicants' arrest until charge, there has been no violation of Article 5(2) of the Convention.

3. Article 5(3) of the Convention

149. The applicants further claim that their rights as guaranteed under Article 5(3) of the Convention have been violated.

150. Article 5, paragraph 3 of the Convention, insofar as relevant, provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time, or to release pending trial…".

151. The purpose of this provision is to prevent individuals from being arbitrarily deprived of their liberty and to ensure that the period of detention following arrest is kept as short as possible (Eur. Court HR, *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, paragraph 30). The Chamber notes that the applicants' complaint raises two issues under Article 5(3). Firstly, that in accordance with the Chamber's previous decisions (see the above-mentioned *Buzuk* decision, paragraphs 98 to 101) the investigating judge before whom the applicants were brought was not a "judge or other officer authorised by law" for the purposes of Article 5(3) of the Convention. Secondly, the applicants claim that they were entitled to be released pending trial due to the length of the proceedings.

a. First limb: requirement of being brought promptly before a judge or other officer authorised by law to exercise judicial power

152. The Chamber recalls that the applicants were brought before the investigative judge on the day of their arrest, namely 10 and 17 September 2000, respectively.

153. The next consideration is whether the investigative judge that the applicants were brought before may be considered "a judge or other officer authorised by law to exercise judicial power" for the purposes of Article 5(3). In *Schiesser* (see the above-mentioned *Schiesser v. Switzerland* decision, paragraphs 30-31) the European Court laid down criteria for determining whether a person can be regarded as such an officer. It noted that, whilst the meaning of "officer authorised by law" is not the same as "judge", the former must have some of the latter's attributes.

i. independence from the executive and from the parties;

ii. the officer is obliged to hear personally the applicant brought before him; and

iii. there is a substantive requirement which places the officer under an obligation to review "the circumstances militating for or against detention" and to decide "by reference to legal criteria whether there are justifications for maintaining detention" and, if there are not, to order the release.

154. The Chamber notes that there is no indication of a lack of impartiality or independence on the part of the investigative judge, neither is it suggested that the investigative judge failed to hear the applicants personally. Accordingly, the Chamber will confine its assessment of the proceedings solely on the third criterion. In *Buzuk* (see the above-mentioned *Buzuk* decision, paragraphs 99 to 100) the Chamber stated:

> "99. The third criterion places a positive obligation on the "judge" or "officer authorised by law" to consider the reasons for maintaining detention. Moreover, it requires that the "judge" or "officer authorised by law" must have the power to discontinue detention if there are no justifications for continuing detention. In *De Jong, Baljet and Van Den Brink v. The Neth*erlands (Eur. Court HR, judgment of 4 May 1984, Series A no. 77), the European Court of Human Rights held, referring to the requirements in *Schiesser*, that if an officer of the court lacked the power to release the applicant, then the continued detention would be unlawful in this respect. In the present case, the applicant's pre-trial detention was ordered on the basis of the then Article 183, paragraph 1 of the Code of Criminal Procedure. This provided for mandatory pre-trial detention if there existed a "warranted suspicion" that the offence had been committed. The judge was prevented from considering the elements contained in Article 183, paragraph 2 (now to be read as Article 183, paragraph 1), requiring deliberation of the risk of flight, tampering with evidence, influencing witnesses or repetition of offences.
>
> "100. The European Court of Human Rights has consistently stated that in any case where judicial discretion is removed by law this will be incompatible with the Convention and any detention based on such provisions unlawful... In the instant case, the power of the judge to release the applicant was not entirely removed, as the judge could still have ordered the applicant's release if he had found that there was no "warranted suspicion" that the applicant committed the offences he was charged with. However, the Chamber finds that in the circumstances, taking the domestic provisions into consideration, the investigative judge did not have any discretion to review the circumstances militating for or against detention, such as, (1) danger of failure to appear for trial, (2) interference with the course of justice, (3) prevention of further offences, (4) the preservation of public order and (5) consideration of the presumption of innocence. The investigative judge also could not exercise discretion by reference to legal criteria whether there were justifications for maintaining detention and if there were not, to order the release, as stated in paragraph 31 of *Schiesser*."

155. The respondent Party maintains that, irrespective of the mandatory nature of detention under the former Article 183(1) of the Code of Criminal Procedure, reasons existed for justifying the continued detention of the applicants, such as security of citizens and risk of influencing witnesses. Furthermore, the respondent Party declares that the application of the mandatory measure does not automatically involve a violation of Article 5(3) as the investigative judge must consider whether a "reasonable suspicion" has been established and it therefore follows that he possesses all the attributes of a judge.

156. The Chamber firstly notes that the mandatory measure of detention provided under the former Article 183(1) of the Code of Criminal Procedure was not applied in the applicants' case until the issuance of the procedural decisions extending their detention on 9 on 16 October 2000, respectively. Accordingly, the Chamber will confine its consideration of the applicants' complaint in this respect to the period from 9 October 2000 until 15 November 2001, in the case of the first applicant, and from 16 October 2000 until 15 November 2001, in the case of the second applicant.

157. The Chamber recalls that the European Court has consistently stated that in any case where judicial discretion is removed by law this will be incompatible with the Convention and any detention based on such provisions unlawful (see e.g., the above-mentioned *De Jong, Baljet and Van Den Brink v. The Netherlands* judgment at paragraphs 47-48). Therefore, the fact that additional reasons may have existed is irrelevant if the investigative judge has no power to consider them. Moreover, the fact that the investigating judge was competent and required to examine the reasonableness of the suspicion against the applicants is not sufficient for the purpose of Article 5(3) of the Convention (see the above-mentioned *Buzuk* decision, paragraphs 99-100, quoted above).

158. The Chamber concludes, in accordance with its previous jurisprudence, that the investigative judge whom the applicants were brought before on 9 and 16 October 2000, respectively, was not a judge for the purposes of Article 5(3) of the Convention as he had no discretion to release the applicants once he had established that there existed a warranted suspicion that they had committed the offences with which they were charged. Accordingly, for the period from 9 October 2000 until 15 November 2001, in the case of the first applicant, and from 16 October 2000 until 15 November 2001, in the case of the second applicant, the respondent Party violated their rights as guaranteed under the first limb of Article 5(3) of the Convention.

b. Second limb: entitlement to trial within a reasonable time, or to release pending trial

159. The applicants complain that they were detained for an unreasonable length of time thus constituting a violation of the second limb of Article 5(3) of the Convention.

i. Period to be taken into consideration

160. The respondent Party has directed the Chamber's attention to the relevant provisions of the Code of Criminal Procedure concerning pre-trial detention (see paragraphs 73 to 79 above) by insisting that the strict time limit of six months pre-trial detention to be adhered to satisfies the requirement of "reasonable time" under Article 5(3) of the Convention. The respondent Party further points out that on the expiry of this six-month period, a bill of indictment must be filed or the detainee released. Thereafter, according to Article 190 of the Code of Criminal Procedure (see paragraph 79 above), the respondent Party states that an individual may be detained up until the end of the main trial and that this period is not restricted in time and therefore not covered by Article 5(3) of the Convention.

161. The Chamber notes as a preliminary point that this is not what Article 5(3) states and the jurisprudence of the European Court has consistently determined that "reasonableness" in this context does not only refer to the processing of the prosecution up to the commencement of the trial, but to the length of overall detention (see the above-mentioned *Buzuk* decision, paragraph 103 citing Eur. Court HR, *Neumeister v. Austria*, judgment of 7 May 1974, Series A no. 8). Accordingly, the argument that the domestic authorities, by complying with domestic legal provisions, have not violated Article 5(3) in this respect cannot be upheld.

162. The period to be taken into consideration for the purposes of Article 5(3) of the Convention, that covers pre-trial detention and detention on remand, began on 10 September 2000, in the case of the first applicant, and on 17 September 2000, in the case of the second applicant, the dates of their respective arrests, and ended on 12 November 2002, with the applicants' release following the decision on their acquittal of the Cantonal Court. It therefore lasted two years, two months and two days in the case of the first applicant, and two years, one month and twenty six days in the case of the second applicant.

ii. Reasonableness of the length of the detention

163. In determining whether the overall length of the applicants' detention during this period was reasonable, the Chamber notes that the European Court is reluctant in applying any rigid test and will instead apply a case by case assessment.

164. The Chamber notes that it falls in the first place to the domestic authorities to ensure that, in a given case, the overall detention of an accused person does not exceed a reasonable time. To this end the domestic court must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release (see e.g., Eur. Court HR, *Toth v. Austria*, judgment of

25 November 1991, Series A no. 224, paragraph 67 and the above-mentioned *W v. Switzerland* judgment at paragraph 30). It is therefore essentially on the basis of the reasons given in these decisions and of the facts mentioned by the applicants in their applications for release and their appeals that the Chamber is called upon to decide whether or not there has been a violation of Article 5(3) (see the above-mentioned *Neumeister v. Germany* decision at p.37, paragraphs 4-5).

165. On a preliminary note, the Chamber recalls that the European Court has consistently stated that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of continued detention, but, after a certain lapse of time, it no longer suffices. The Chamber must then establish whether the other grounds cited by the domestic courts continued to justify the deprivation of liberty (see e.g., Eur. Court HR, *Kemmache v. France*, judgment of 27 November 1991, Series A no. 218, paragraph 45). Where such grounds were "relevant" and "sufficient", the Chamber must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings and whether the subject matter for consideration was particularly complex in nature, thus justifying such length. Additionally, the Chamber must examine whether the applicants have contributed to any delay in the proceedings, as the domestic authorities are not responsible for any delays attributable to the applicants or their lawyers.

a. Relevant and sufficient reasons

166. The Chamber notes that the European Court has consistently stated that grounds which the Court will accept as justification for continued detention of individuals prior and during their criminal trial may include:

i. If, from the severity of the proposed sentence, and the detainee's own circumstances, it is likely that he or she will escape;

ii. If it appears likely that the accused person will interfere with the course of justice, by destroying documents or colluding with other possible suspects and interfering with witnesses, continued detention will be justified;

iii. The public interest in the prevention of crime is another ground for justification; this will be relevant if there are good reasons to believe that the accused will re-offend on release and a genuine requirement of public interest, notwithstanding the presumption of innocence, outweighs the respect for individual liberty;

iv. The final ground for continuing detention is the preservation of public order, although this argument will only succeed if there is objective justification for the prospect of a risk to public order posed by the accused's release.

167. The Chamber recalls that it has already found a violation of the first limb of Article 5(3) (see paragraphs 152 to 158 above) for the period from 9 October 2000, in the case of the first applicant, and from 16 October 2000, in the case of the second applicant, until the issuance of the procedural decision of 15 November 2001 for the reason that the judicial authorities had no power to review the grounds for detaining the applicants once it had been established that there existed a warranted suspicion that they had committed the offences with which they were charged. Accordingly, the Chamber will not examine the reasons given for extending detention for the period up until 15 November 2001. However, the Chamber will take into consideration that upon the issuance of the procedural decision of 15 November 2001, the applicants had already been held in pre-trial detention for approximately fourteen months.

168. In dismissing the applicants' requests for release, subsequent to the issuance of the procedural decision of 15 November 2001, the domestic courts put forward in essence two reasons:

i. In accordance with Article 183(2)(ii) of the Code of Criminal Procedure there was a warranted fear that if released the applicants would destroy, hide or falsify evidence or that they would influence witnesses.

ii. In accordance with Article 183(2)(iv) of the Code of Criminal Procedure it is specifically provided that for the offence of terrorism under Article 146 of the Criminal Code, detention may be ordered if necessary for the safety of citizenry, thus satisfying the fourth criterion above of "preservation of public order".

169. By the procedural decision of 15 November 2001, and repeated in all subsequent procedural decisions extending detention, the domestic courts considered that due to the manner of execution, the seriousness of the offence and its categorisation as an offence of terrorism, the applicants posed a credible threat to public safety and therefore their detention could be based on the ground of the preservation of public order. The Chamber notes that the term "preservation of public order" is large in scope and encompasses public safety as well as social disturbance. The respondent Party stresses that the explosive device was detonated in broad daylight in a public area where a number of citizens were present and placed at grave risk. In *Letellier* (see the above-mentioned *Letellier v. France* decision, paragraph 91) the European Court noted that an act of premeditated murder could qualify as such a risk to public safety. Accordingly, the Chamber notes that the domestic authorities duly considered the risk to public safety as a legitimate ground to detain the applicants on remand. Additionally, the domestic courts considered that there was a real risk that the applicants would interfere with witnesses and tamper with evidence. The Chamber accepts that this is a legitimate ground for detaining individuals and notes that the domestic courts considered that as a number of witnesses resided in the same area as the applicants there was a real risk that attempts to intimidate or influence such witnesses would be made. The domestic courts further considered that due to the manner in which the offence was executed the applicants would take all steps necessary in hindering the investigation against them and due to the fact that the collection of essential evidence continued after the commencement of the main trial and caused the investigating authorities great difficulties, this was considered to be a real risk.

170. On examination of the procedural decisions issued by the domestic courts, the Chamber is satisfied that the risk of interfering with witnesses and/or tampering with evidence and the continued threat to public safety was sufficiently taken into consideration, at different stages of the proceedings, by the domestic courts and that such consideration was periodically reviewed, thus satisfying the requirement of "relevant" and "sufficient" reasons. Additionally, the Chamber is aware of the inherent problems in assessing the necessity of detention, both during the pre-trial stage and on remand, in cases of organised crime and terrorism. To find that insufficient reasons were given in the present case would impose such a strict duty on the domestic courts that it would be virtually impossible to detain individuals pre-trial and on remand during the main trial.

b. The conduct of the proceedings

171. The Chamber recalls that if the prolonging of detention on remand is based on well-founded reasons, the question remains whether the domestic authorities displayed "special diligence". In this respect the question cannot be answered in the abstract and Article 5(3) does not imply a maximum length of detention. Instead, the European Court attaches particular importance to the complexity of the case, the conduct of the domestic authorities and the conduct of the applicants. If the length of detention on remand does not appear connected to the complexity of the case or the conduct of the applicant and the authorities have not acted with necessary promptness, then Article 5(3) will be violated (see e.g., Eur. Court HR, *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A). Moreover, the mere fact that the domestic authorities have shown that "relevant and sufficient" reasons existed will not exonerate them of their duty to expedite the proceedings, as what may be considered relevant and sufficient during the early stages of the proceedings may cease to be considered so after the passage of time. In *Kemmache v. France* (Eur. Court HR, judgment of 27 November 1991, Series A no. 218, paragraph 52) the European Court made it clear that detention may only be justified for as long as the risk persists.

172. The respondent Party contests that the overall length of detention was unreasonable. It stresses the complexity of the case, the number of defendants and the number of witnesses. It

further states that a number of delays in the proceedings were caused by the applicants and their co-defendants.

173. As previously stated, the applicants were arrested on 10 and 17 September 2000, respectively. In the case of the first applicant, detention was reviewed on 9 October and 7 December 2000. In the case of the second applicant, detention was reviewed on 16 October and 14 December 2000. On 9 March 2001 an indictment was filed and on 7 June 2001 the first hearing in the criminal proceedings against the applicants commenced at the Cantonal Court. The Chamber recalls from its assessment of the pertinent facts and on consideration of the respondent Party's written observations that the criminal trial against the applicants was adjourned on ninety-seven separate occasions between 7 June 2001 and 12 November 2002. The respondent Party has submitted that such a high number of adjournments were, to a considerable extent, the responsibility of the applicants and their co-defendants. On examination of the documents submitted by the respondent Party, the Chamber notes that eighty-five separate adjournments have been detailed and that six adjournments were caused or requested by the applicants, sixteen adjournments by co-defendants, twenty-nine adjournments by the organs of the respondent Party and thirty-four adjournments are detailed without any reasons submitted. However, the Chamber notes that despite such a high number of adjournments, there were no lengthy periods of inactivity.

i. Complexity

174. In assessing the diligence of the domestic authorities it is important to consider the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses required, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial. The Chamber notes in this respect that there were six co-defendants, two of whom were tried *in absentia*, forty-seven witnesses, numerous expert opinions and two protected witnesses. The Chamber notes that offences of terrorism by their very nature are often complex. Additionally, the use of protected or anonymous witnesses will undoubtedly add to the burden of processing such testimony, thereby adding to the complexity of the case before the domestic courts.

175. The Chamber therefore acknowledges that the investigation raised some difficult questions of fact, which contributed to the lengthening of the proceedings.

ii. Conduct of the domestic authorities

176. The Chamber recognises that Article 5(3) imposes a strict requirement that, once the court has ordered that an accused must remain in custody pending trial, special diligence must be exercised and priority given to the accused's trial. However, this requirement must be carefully balanced against the duty of the court to fully ascertain the facts and permit the parties to thoroughly present their respective cases.

177. The Chamber recognises that there are no protracted periods of inactivity of the authorities in the case. However, the respondent Party is also responsible for organising its proceedings in a way that will avoid excessively long periods of detention on remand.

178. The Chamber notes that the delays in the proceedings in the applicants' case, in particular the length of detention during trial, appears to be due to certain "systematic" problems. Firstly, the trial was restarted on 12 December 2001 due to the change in composition of the panel of lay judges for the reason that their mandate had expired in accordance with Article 300(1) of the Code of Criminal Procedure (see paragraph 81 above). The Chamber notes that their mandate expired just six months after the commencement of the main trial and although the Court could not have known the exact length of the main trial, it could have contemplated such a problem arising. Additionally, the Chamber notes that the trial was previously halted on 6 July 2001 due to the death of a lay judge, and whilst no blame may be attributed for such an unforeseeable eventuality, the Chamber notes with concern that in such an important criminal trial no contingency plans are made for the withdrawal of a judge for any reason whatsoever. It is the practice in many European countries for alternate

judges to follow the proceedings in case of such an emergency so that a judge may be replaced without disrupting the proceedings and without causing unnecessary delay. Accordingly, the Chamber notes that the death of one lay judge and the expiration of a second lay judge's mandate caused some delay to the proceedings.

179. Secondly, it appears to be the practice of the Courts in the Federation of Bosnia and Herzegovina to adjourn the proceedings after the hearing of a witness, sometimes for several days at a time. Such an eventuality is not expressly provided for under the Code of Criminal Procedure concerning postponement and adjournments of the main trial and is therefore governed by the general principles under Article 299(1) and Article 301(1) of the Code of Criminal Procedure (see paragraph 81 above). Nevertheless, the Chamber recalls that the domestic authorities are required to give priority to individuals held in detention and to exercise due diligence.

180. Thirdly, the Chamber notes that, according to the respondent Party, the Cantonal Court is overburdened with criminal cases and its insufficient administrative and judicial staff means that it is unable to complete its caseload in a timely manner. Additionally, according to Article 301(1) of the Code of Criminal Procedure (see paragraph 81 above) an adjournment may be ordered on the expiry of working hours (see paragraph 36 above) or indeed for a "rest". In this respect, the Chamber notes that, at any one time, the Cantonal Court is obliged to hear a number of cases concurrently, thereby causing delay to the final conclusion of individual cases. This means that in any given case, hearings will be scheduled less frequently depending upon the caseload of the Court or the individual Panel of Judges. In such circumstances, it is not uncommon for a case to be listed for merely one or two hearings per month. However, the Chamber reiterates that in such an important criminal trial where the applicants were held in detention for a lengthy period of time, the domestic authorities are required to organise their caseload in such a way as to be able to deal with individual cases expeditiously.

181. Fourthly, the very strict six-month limitation on pre-trial detention from arrest until the filing of a bill of indictment appears to have resulted in the investigation continuing while the trial is already in course. This is evidenced in the present case by a number of adjournments at the request of the Cantonal Prosecutor in order to locate additional witnesses and secure supplementary evidence in accordance with Article 299(1) of the Code of Criminal Procedure (see paragraph 81 above). This inevitably causes additional delay. The Chamber notes that the strict six-month period provided under Article 188 of the Code of Criminal Procedure for the filing of the indictment forces the prosecuting authorities to act very expeditiously in this phase, also in a complex case as the present one. However, the benefit of this six-month deadline is lost when the court, after the confirmation of the indictment, gives the prosecuting authorities unlimited latitude to continue investigating the case and allows the trial to be significantly delayed for that purpose.

iii. Conduct of the applicants

182. The respondent Party submitted in its written observations of 16, 18 and 20 September 2002 that the conduct of the applicants contributed to the length of proceedings. The respondent Party states that the applicants' defence counsel failed to appear on numerous occasions, requested frequent adjournments and submitted various complaints as to the composition of the Panel of Judges of the Cantonal Court. The Chamber recalls that in the *Buzuk* case (see the above-mentioned *Buzuk* decision, paragraph 113), it found that an accused is under no obligation to assist the prosecution in expediting their case. However, if the accused prolongs the proceedings then this must be a consideration. The Chamber notes that the applicants caused delays on 7 June 2001, 12 July 2001, 27 December 2001, 13 February 2002, 24 April 2002 and 3 October 2002. Furthermore, the respondent Party alleges that these delays were caused by complaints concerning the competence of the Cantonal Court and a number of appeals. In this respect, the Chamber recalls that the applicants are perfectly entitled to take legitimate points by way of appeal (see e.g., Eur. Court HR, *Ledonne (No. 1) v. Italy*, judgment of 12 May 1999, paragraph 25). Nonetheless, such conduct is not capable of being attributed to the respondent Party, which is to be taken into account when determining whether or not the overall length of detention

was reasonable. In this respect the Chamber notes that the delays caused by the applicants, or their co-accused, amounted to a total of 201 days. Accordingly, the Chamber finds that the applicants contributed to the delay in the proceedings.

c. Conclusion as to the reasonable length of detention

183. The Chamber recalls that the administrative running of a legal system is the responsibility of the respondent Party and any delays caused as a result will be directly attributable to the respondent Party (see, e.g., Eur. Court HR, *Ledonne (No. 2) v. Italy*, judgment on the merits of 12 May 1999, paragraph 23). Additionally, it is the responsibility of the respondent Party to organise their judicial system in such a way as to ensure the reasonably expeditious conduct of individual cases and to organise their legal system so as to allow the courts to comply with the requirements of Article 5(3) and equally Article 6(1) of the Convention. The mere fact that the Cantonal Court has a backlog of criminal cases and insufficient judicial and administrative staff, thereby causing delay to individual cases will not absolve them of their requirement to act diligently.

184. It is thus apparent that the length of proceedings is attributable only partly to the complexity of the case and the conduct of the applicants. Having regard to the characteristics of the investigation and the substantial delays in the court proceedings, the Chamber considers that the domestic authorities did not act with the "special diligence" required under Article 5(3) of the Convention.

185. Against the above background, the Chamber finds that the overall period spent by the applicants in detention, including pre-trial detention and detention on remand, exceeded a "reasonable time". There has thus been a violation of Article 5(3) of the Convention in this respect.

c. Conclusion as to Article 5, paragraph 3 of the Convention

186. To sum up, the Chamber therefore finds, that the applicants were not brought before a "judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5, paragraph 3, from the issuance of the procedural decisions of 9 and 16 October 2000, respectively, until 15 November 2001, and that the length of their detention from their arrest until their release on 12 November 2002 exceeded the limits of reasonableness. Consequently, the respondent Party violated the applicants' rights as guaranteed by Article 5, paragraph 3 of the Convention.

4. Reasonable time requirement under Article 6(1) of the Convention

187. The applicants complain that the length of their trial was unreasonable under Article 6 of the Convention which is worded, insofar as is relevant, as follows:

> "In the determination of…any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law."

188. This issue overlaps with Article 5(3) of the Convention (as discussed above), but Article 6(1) of the Convention provides a more general right to a trial within a reasonable time whereas Article 5(3) deals more specifically with the right of a person in detention to be brought promptly before a judge and subsequently entitled to a trial within a reasonable time.

189. The respondent Party has stated that the applicants' rights under Article 6(1) of the Convention were at all times respected and that it cannot be said that the applicants failed to receive a fair trial within a reasonable time. However, as a preliminary point, the Chamber stresses that the right to a trial within a reasonable time is an independent, free-standing, right. A violation of this right may be found in the absence of any prejudice to the fairness of the defendant's trial. This was made explicit in *Eckle v. Federal Republic of Germany* (Eur. Court HR, judgment of 21 June 1983, Series A no. 65). The reason for such a right is to ensure that accused persons do not lie under a charge for too long and that the charge is determined (Eur. Court HR, *Wemhoff v. Federal Republic of Germany*, judgment of 27 June 1969, Series A no. 7, paragraph 64), to protect the accused against procedural

delays and prevent him from remaining too long in a state of uncertainty about his fate (Eur. Court HR, *Stogmuller v. Austria*, judgment of 10 November 1969, Series A no. 9, paragraph 62) and to avoid delays that might jeopardise the effectiveness and credibility of the administration of justice (Eur. Court HR, *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81, paragraph 80).

190. In any case in which it is said that the reasonable time has been violated the first step is to consider the period of time that has elapsed and unless that period is one which gives grounds for 'real' concern, then it is unlikely that a violation will be established. The Chamber notes that the threshold for establishing such a violation is high and not easily crossed.

a. Period in which time begins

191. The right under Article 6(1) begins to run from the moment a person is charged within the meaning of the Convention. In *Eckle* (see the above-mentioned *Eckle v. Germany* decision at paragraph 73), the European Court defined a charge for the purposes of Article 6 of the Convention as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence". This means that the moment when time begins to run is not necessarily when an indictment is served or charges formally filed, as an arrest may precede charge. Once an individual is aware that he is officially suspected of a criminal offence, from that moment he has an interest in an expeditious decision about his guilt or innocence being made by the court.

192. The respondent Party has rightly pointed out the position of the European Court, as stated in *Girolami v. Italy* (Eur. Court HR, judgment of 19 February 1991, Series A no. 196-E, paragraph 13), that even if an accused is aware of a charge against him and is on the run, time does not start to run during this period for the purposes of Article 6(1). Additionally, although the applicants have denied that they were on the run, they cannot now claim to benefit from time running as early as April 2000 when an arrest warrant was issued. Accordingly, the earliest point that time could start to run is 10 September 2000, in the case of the first applicant, and 17 September 2000, in the case of the second applicant.

b. Period in which time ends

193. The next consideration for Article 6(1) is when time ceases to run. For the purposes of Article 6(1), time ceases to run when the proceedings have been concluded or when determination becomes final (see e.g., Eur. Court HR, *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, paragraph 18). Ordinarily this would be upon delivery of the final judgment. The Chamber notes that the Cantonal Prosecutor submitted an appeal against the first instance judgment on 11 February 2003 and that appeal is currently pending before the Supreme Court. Accordingly, time will not stop running until such time as the appeal is finally dealt with. Nonetheless, the fact that the criminal proceedings remain pending before the domestic organs will not prevent the Chamber from examining whether, as of the date of its decision, the duration has been or has not been unreasonably long (see e.g., case no. CH/00/4295, *Osmanagić*, decision on admissibility and merits of 5 March 2002, Decisions January-June 2002, paragraphs 49 to 57).

194. Accordingly, the relevant time period for the purpose of Article 6(1) of the Convention is from 10 September 2000, in the case of the first applicant, and 17 September 2000, in the case of the second applicant, until the date of delivery of the present decision, that is to say just over two years and seven months.

c. Assessment

195. Once the time period has been established, the reasonabless for any delay must be assessed taking into consideration the complexity of the case, the conduct of the applicants, the conduct of the relevant domestic authorities and what was at stake for the applicant in litigation (see e.g., Eur. Court HR, *Pisaniello & Others v. Italy*, judgment of 5 November 2002, paragraph 22 and *Papadopoulos v. Greece*, decision on the merits of 9 January 2002, paragraph 14).

196. The question of complexity is one that is difficult to assess in general and must be adjudged on a case by case basis. However, the European Court has attached importance to several factors, such as the nature of the facts to be assessed, the number of accused persons, and the number of witnesses to be heard. This consideration may well concern issues of law as well as of fact. The respondent Party maintains that the complexity of the proceedings is indisputable. In this respect, the Chamber notes that the indictment named six individuals, two of whom remained at large. The indictment alleged that the six individuals had followed a common objective and had conspired to murder the Deputy Federation Minister of the Interior by placing an explosive device on the undercarriage of his official car. The Chamber recalls that forty-seven witnesses were called in addition to the two protected witnesses and additional expert opinion. In this respect, the procedure for the hearing of protected witnesses by its very nature causes delay, which is necessary to adequately protect such witnesses. Moreover, the Chamber recalls that the more complex the case, the greater the number of witnesses required, the heavier the burden of documentation and the longer the time required to adequately prepare for trial. Therefore, the Chamber is inclined to agree, taking into consideration the above criteria, that the facts to be assessed and the legal questions to be argued were complex in nature.

197. As to the second criterion, i.e., the conduct of the applicants, the Chamber recalls that in *Ledonne (No. 1)* (see the above-mentioned *Ledonne (No. 1) v. Italy* decision at paragraph 25) the European Court stated:

> "…Article 6 does not require accused persons actively to co-operate with the judicial authorities. Neither can any reproach be levelled against them for making full use of the remedies available under domestic law. Nonetheless, such conduct constitutes an objective fact, not capable of being attributed to the respondent state, which is to be taken into account when determining whether or not proceedings exceeded a reasonable time."

Additionally, the Chamber has already found in relation to its consideration of the reasonable length of detention under Article 5(3) that the applicants contributed to the overall length of proceedings (see paragraph 182 above).

198. As discussed in paragraphs 176 to 181 above, the conduct of the national authorities plays an important part in determining the reasonableness of the length of proceedings. The respondent Party has stated in its written observations that the delay was partially attributed to the contacting and hearing of numerous witnesses. Firstly, the European Court has stated that this is not necessarily a ground that the respondent Party will be able to rely on (Eur. Court HR, *Idrocalce SRL v. Italy*, judgment of 27 February 1992, Series A no. 229-F and *Tumminelli v. Italy*, judgment of 27 February 1992, Series A no. 231-H). Secondly, the Chamber has already held (see paragraph 181 above) that considering the length of the investigation the respondent Party should not be afforded additional time in which to investigate during the main trial, causing numerous adjournments as a result of an inadequate investigation. As to the administrative organising of its judicial system, the Chamber finds that delays caused by lack of judicial or administrative staff, backlog of work or additional judicial commitments are the responsibility of the respondent Party (see e.g., Eur Court HR, *Zimmerman and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, paragraphs 27 to 32 and *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81, paragraphs 40 to 41). Furthermore, the workload of the court is not a good reason for delay (see e.g., Eur. Court HR, *Majaric v. Slovenia*, decision on the merits of 8 February 2000, paragraph 39) neither is a shortage of resources. The Chamber reiterates that Article 6(1) of the Convention imposes a duty on the respondent Party to organise their judicial system in such a way that their courts can meet the requirements of this provision (see e.g., Eur. Court HR, *Ziacik v. Slovakia*, decision on the merits of 7 January 2003, paragraphs 44-45).

199. The Chamber notes that the "systematic" and "institutionalised" problems within the Federation judicial system, which it has referred to above, that cause repeated delays and adjournment of proceedings, are cause for grave concern and should be addressed by the relevant bodies. Even if "systematic" delays may be more excusable than individual failings, there must come a time when systematic causes can no longer be considered exculpatory. The Convention is not a set

of "illusory" or "aspirational" directive principles of state policy – it is intended that the respondent Party should make whatever arrangements are necessary to avoid violations of the Convention.

d. Conclusion as to the reasonable time requirement

200. Taking all the above elements into consideration, the Chamber finds, however, that, so far, the period under consideration is not excessively long considering the complexity of the case and whilst the domestic authorities failed to act with the special diligence required by Article 5(3) of the Convention, this did not result in unreasonable delays in the proceedings for the purposes of Article 6(1). The Chamber further notes that several of the adjournments were granted at the request of the applicants and their co-accused, and there were no lengthy periods of inactivity. Accordingly, whilst the Chamber finds that the proceedings were conducted in an unsatisfactory manner, it finds that there has been no violation of Article 6(1) of the Convention in this regard.

5. Article 6(3)(a) of the Convention

201. Article 6, paragraph 3(a) of the Convention, insofar as relevant, provides as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> > "(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him."

202. Once an indictment has been filed, the requirements of Article 5(2) are superseded by those of Article 6(3)(a). The requirement of Article 6(3)(a) is that everyone charged shall be informed promptly and in detail of the charges against them. The purpose of this provision, unlike Article 5(2), is to enable the individual to begin to prepare a defence to the charges (Eur. Commission HR, *G, S and M v. Austria*, no. 9614/81, decision of 12 October 1983, Decisions and Report 34, p.119 at p.121).

203. For the purposes of Article 6(3)(a) the relevant time period is the moment the indictment was filed on 9 March 2001 and not upon arrest or first appearance as under Article 5(2). Considering that the information required at this stage is to permit an accused to begin preparation of his defence, the information required must therefore be in greater detail than the information required under Article 5(2) and must explain the nature and cause of the accusation against the applicants.

204. It is important to note that the purpose of Article 6(3)(a) in this respect is that it prevents the prosecuting authorities from surprising the defence at trial, that is to say, to propose facts or charges that were not previously put to the applicants. However, the applicants were presented with the indictment of 9 March 2001 that detailed the allegations that were to be presented at trial against them. Upon examination of this indictment, the Chamber finds that it was not vague in character and it set forth the charges against the applicants and their alleged involvement in the murder of the Deputy Federal Minister of Interior in sufficient detail. The fact that additional witnesses and supplementary evidence were presented during the trial will not necessarily violate Article 6(3)(a) as long as such evidence is within the scope of the indictment or any amendment thereof.

205. On this basis, the Chamber finds that the applicants have failed to show any grounds for a violation of Article 6(3)(a). The Chamber finds that the indictment of 9 March 2001 was sufficiently clear and detailed in nature to permit the applicants to prepare a defence to the charges. Therefore, the Chamber finds that there has been no violation of Article 6(3)(a) of the Convention.

6. Complaint relating to an effective remedy

206. The applicants complain that there is no effective remedy in respect to the prolongation of detention in violation of Article 13 of the Convention. However, due to the finding of a violation under

Article 5(3) of the Convention, the Chamber considers it unnecessary to separately examine the complaint under Article 13 of the Convention.

7. Conclusion as to the merits

207. The Chamber therefore finds, in conclusion, that the respondent Party has violated the applicants' rights as guaranteed under Article 5(3) in that for the period from 9 October 2000 until 15 November 2001, in the case of the first applicant, and from 16 October 2000 until 15 November 2001, in the case of the second applicant, the investigative judge was not a "judge or other officer authorised by law to exercise judicial power" and that the length of the applicants' detention from arrest until their subsequent acquittal on 12 November 2002 exceeded the limits of reasonableness.

VIII. REMEDIES

208. 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 breaches of the Agreement, which it has found, "including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures".

209. The applicants have not submitted any claims for compensation, but it is apparent from their applications that they are seeking non-pecuniary compensation of an unspecified amount. The respondent Party did not submit observations on any claims for compensation, but has continually declared the applications inadmissible as ill-founded.

210. The Chamber notes its finding that the applicants' detention from 9 October 2000, in the case of the first applicant, and from 16 October 2000, in the case of the second applicant until the issuance of the procedural decision of 15 November 2001 was in violation of Article 5(3) of the Convention. After that date the applicants' detention was in accordance with the law as amended by the High Representative's decision amending Article 183(1) of the Code of Criminal Procedure of 7 November 2001. Furthermore, the Chamber has found that the length of the applicants' detention from arrest until their acquittal on 12 November 2002 exceeded the limits of reasonableness. The Chamber notes that the applicants were acquitted of all charges on 12 November 2002. The Chamber is therefore of the opinion that a decision finding a violation of the applicants' human rights is not sufficient satisfaction as a remedy for the harm suffered by them.

211. The Chamber notes that violations have been established in the present case and finds it appropriate, considering the case in general terms, to award each applicant compensation for non-pecuniary damage for the harm suffered in the amount of 5,000 KM (Convertible Marks). This amount is to be paid within one month from the date of delivery of this decision, that is to say no later than 9 June 2003.

212. The Chamber will now turn to the question of compensation for legal costs and expenses incurred in the proceedings before the Chamber. The Chamber finds it appropriate in the present case, taking into consideration that the applicants have submitted a number of written submissions at the request of the Chamber, to order the respondent Party to pay compensation for legal costs and expenses to each applicant, within one month from the date of delivery of this decision, that is to say no later than 9 June 2003, in the amount of KM 1,000. As to legal costs and expenses incurred in the domestic proceedings, the Chamber notes that the applicants may be entitled to recover any costs and expenses incurred under Articles 88 to 95 of the Code of Criminal Procedure after the decision of the domestic courts becomes final and binding.

213. The Chamber further finds it appropriate to award simple interest at an annual rate of 10% as from the date of expiry of the one-month period set in paragraphs 211 to 212 above for the implementation of the compensation award, on the full amount of the award or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

214. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications in relation to the complaints under Articles 5(1)(c), 5(2) 5(3), 6(1) in relation to the reasonable time requirement, and 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms admissible;

2. unanimously, to declare the remainder of the applications inadmissible;

3. by 11 votes to 1, that the applicants' detention was not in violation of Article 5, paragraph 1(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

4. unanimously, that there has been no violation of the applicants' right to be informed promptly of the reasons for their arrest and of any charge against them as guaranteed by Article 5, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

5. unanimously, that there has been no violation of the applicants' right to be informed promptly of the nature and cause of the accusation against them as guaranteed by Article 6, paragraph 3(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

6. unanimously, for the period from the 9 October 2000, in the case of the first applicant, and 16 October 2000, in the case of the second applicant, until the issuance of the procedural decision of 15 November 2001, that the investigative judge whom the applicants were brought before was not a judge or other officer authorised by law for the purposes of Article 5, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, thus constituting a violation of that Article, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

7. by 9 votes to 3, that the length of the first applicant's detention from 10 September 2000 until 12 November 2002 and the second applicant's detention from 17 September 2000 until 12 November 2002 constitutes a violation of their right to be tried within a reasonable time or released pending trial as guaranteed by Article 5 paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

8. unanimously, that there has been no violation of the applicants' right to be tried within a reasonable time as guaranteed by Article 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

9. by 8 votes to 4, to order the Federation of Bosnia and Herzegovina to pay to each applicant, within one month from the date of delivery of this decision, that is to say no later than 9 June 2003, the sum of 5,000 KM (five thousand Convertible Marks) by way of compensation for non-pecuniary damage;

10. unanimously, to order the Federation of Bosnia and Herzegovina to pay to each applicant, within one month from the date of delivery of this decision, that is to say no later than 9 June 2003, the sum of 1,000 KM (one thousand Convertible Marks) by way of compensation for legal costs and expenses incurred in the proceedings before the Chamber;

11. unanimously, that simple interest at an annual rate of 10% (ten percent) will be payable on the sums awarded in conclusions 9 and 10 above from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicants under this decision; and

12. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within three months from the date of delivery of this decision, that is to say no later than 9 August 2003 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber