DECISION ON ADMISSIBILITY AND MERITS

(Delivered on 6 June 2003)

Case no. CH/02/9628

CATHOLIC ARCHDIOCESE OF VRHBOSNA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 May 2003 with the following members present:

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

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

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

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

I. INTRODUCTION

1. Since 1893, the applicant, the Catholic Archdiocese of Vrhbosna, owned land and buildings registered in the land books of Travnik Municipality. Among this property was the Archdiocese Gymnasium building, which housed a Catholic secondary school and a preparatory school for education of future priests.

2. In 1946, as part of the nationalisation process, all property owned by the Archdiocese was expropriated by the communist authorities and placed at the disposal of Travnik Municipality.

3. Beginning in 1990, the Catholic Archdiocese of Vrhbosna requested authorities of Travnik Municipality and the state government to return certain property, including the Gymnasium building and surrounding land, for its use.

4. In 1998, pursuant to a procedural decision of Travnik Municipality, the Catholic Archdiocese of Vrhbosna entered into possession and use of one-third of the Gymnasium building, while the remaining portion remained in control of Travnik Municipality. The Archdiocese asserts, among other grievances, that its part of the building was badly damaged during the armed conflict in Bosnia and Herzegovina and is not of sufficient size to carry out its religious functions.

5. Meanwhile, on 19 September 1997, the Executive Board of Travnik Municipality had issued a Conclusion to return all real estate formerly expropriated from the Islamic Community back to the Islamic Community for its use. Subsequently, numerous procedural decisions were issued giving the Islamic community rights to use its former property.

6. Based on this course of events, the applicant alleges discriminatory treatment with regard to its property rights and its right to practice its religion.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The application was submitted to the Chamber on 22 March 2002 and registered on the same day. The applicant is represented by Dr. Pero Sudar, a priest and the Auxiliary Bishop of the Catholic Archdiocese of Vrhbosna. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to correct the alleged violations so that the Archdiocese could utilise the entire Gymnasium building for the 2002-03 academic year.

8. The Chamber considered the case on 6 May 2002 and decided to refuse the request for a provisional measure. The Chamber also decided to transmit the application to the respondent Party for its observations on admissibility and merits under Article 9 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention and discrimination in the enjoyment of those provisions. The application was transmitted to the respondent Party on 15 May 2002.

9. The Chamber received written observations on the admissibility and merits of the application from the respondent Party on 16 July 2002. These observations were transmitted to the applicant on 17 July 2002 for its response.

10. On 4 September 2002, the Chamber received supplemental written observations from the applicant. These observations were transmitted to the respondent Party on 10 September 2002.

11. The Chamber again considered the case on 11 October 2002 and decided to ask the parties for additional information. Specific requests for supplemental information were sent to both the applicant and the respondent Party on 21 October 2002.

12. On 28 October 2002, the Chamber received supplemental written observations from the applicant. These observations were transmitted to the respondent Party on 6 November 2002.

13. The Chamber received supplemental written observations from the respondent Party on 5 November 2002. These observations were transmitted to the applicant on 6 November 2002.

14. On 7 November 2002, the Chamber again considered the case and decided to hold a public hearing. On 4 December 2002, a public hearing was held in Travnik. At the public hearing, the applicant was represented by Dr. Pero Pranjić, Principal of the Catholic Education Center in Travnik, and Reverend Ilija Marinović. The respondent Party was represented by Ms. Emina Hasanović, Agent of the Federation of Bosnia and Herzegovina, and her assistants, Mrs. Safija Kulovac and Mr. Mirsad Gačanin. The Chamber heard from the following witnesses: Mrs. Izeta Mameledija, Chief of the Department for Urbanism, Construction, Property, Legal Affairs, and Cadaster, Travnik Municipality; Mr. Enver Beganović, former President, Executive Council of Travnik Municipality; Mr. Adil Lozo, Attorney, representing the Islamic Community of Travnik; and Mr. Nikola Lovrinović, representing the Catholic Community of Travnik. On 16 December 2002, the Chamber transmitted additional documents received from the parties at the public hearing to both the applicant and the respondent Party.

15. During the public hearing, the respondent Party suggested that a friendly settlement of the case might be possible, and the parties later agreed to discuss that possibility. The Chamber subsequently facilitated two meetings between the parties aimed at reaching a friendly settlement of the dispute. These meetings, however, did not result in a friendly settlement of the case.

16. On 27 November 2002 and 17 January 2003, the Chamber received additional information from the respondent Party. On 23 December 2002, 30 December 2002, 22 January 2003, and 6 February 2003, the Chamber received additional information from the applicant. Each of these submissions was subsequently transmitted to the other party.

17. The Chamber again considered the case on 7 February, 6 and 31 March, 7 and 9 May 2003. On the latter date, the Chamber adopted the present decision.

III. STATEMENT OF FACTS

A. Written evidence

18. Since 1893, the applicant, the Catholic Archdiocese of Vrhbosna, owned land and buildings registered in the land books of Travnik Municipality. Among this property was the Archdiocese Gymnasium building, which housed a Catholic secondary school and a preparatory school for education of future priests.

19. In 1946, as part of the nationalisation process, all property owned by the Archdiocese was expropriated by communist authorities and placed at the disposal of Travnik Municipality. Between 1946 and 1999, the Catholic dioceses in Bosnia and Herzegovina had to send prospective priests to the Republic of Croatia for their preparatory training.

20. On 20 March 1995, Cardinal Vinko Puljić of the Catholic Archdiocese of Vrhbosna wrote to Mr. Muhamed Čurić, Head of Travnik Municipality, requesting return of the Gymnasium building.

21. On 19 September 1997, the Executive Board of the Municipal Assembly of Travnik met and issued a Conclusion, which reads as follows:

> CONCLUSION
>
> All real estate owned by the Islamic Community shall be given to and placed at the disposal of the Islamic Community in Travnik.
>
> To identify this real estate, a Commission consisting of three representatives of Travnik Municipality and two representatives of the Islamic Community shall be formed.
>
> The Islamic Community should propose its two members ... (illegible) ... of the work of the Commission, the real estate shall be given to the Islamic Community.

The Conclusion is signed by the President of the Executive Board and bears the stamps of both the Executive Board of Travnik Municipality and the Board of the Islamic Community in Travnik.

22. A list provided by the respondent Party details twenty-two different properties returned to the Islamic Community by five procedural decisions of Travnik Municipality. The total surface area of the listed premises is given as 1196 square meters.

23. On 14 March 1998, the Presidency of Bosnia and Herzegovina, Office of Mr. Krešimir Zubak, wrote to the Travnik Municipal Council, requesting that the issue of equal treatment raised by the Catholic Archdiocese of Vrhbosna be placed on the agenda of the next meeting of the Travnik Municipal Council.

24. On 8 April 1998, the Catholic Archdiocese of Vrhbosna wrote to Mr. Enver Beganović, Mayor of Travnik Municipality, in response to a proposal offered on 6 April 1998 by Travnik Municipality regarding the Gymnasium building. The letter states that the proposal is unacceptable.

25. On 10 June 1998, the Catholic Archdiocese of Vrhbosna addressed a letter to the Travnik Municipal Council, requesting return of the Gymnasium building and related surrounding property. The letter states an immediate request for fifty percent of the building space and a request for the remaining portion to be returned by 1 July 2000.

26. On 23 June 1998, at a meeting in Sarajevo, representatives from the Catholic Archdiocese of Vrhbosna, the Presidency of Bosnia and Herzegovina, Travnik Municipality, and Middle-Bosnia Canton reached an Agreement on ceding part of the Gymnasium building for the needs of the Catholic Education Center of the Catholic Archdiocese of Vrhbosna. The agreement details the portions of the building to be ceded and states that the Archdiocese shall file a relevant request with Travnik Municipality.

27. On 26 June 1998, the Catholic Archdiocese of Vrhbosna addressed Travnik Municipality in writing to request a decision ceding the property as outlined in the 23 June 1998 Agreement. The letter also requests Travnik Municipality to endeavour to secure adequate school space so that the entire Gymnasium building might be turned over to the Catholic Archdiocese of Vrhbosna.

28. On 9 July 1998, pursuant to procedural decision no 47-82/98 issued by the Chief of Travnik Municipality, part of the Gymnasium high school building was returned to the Catholic Church. The total surface area of the returned portion of the property is listed as 5869.67 square meters. This property is currently the Catholic school center known as “Petar Barbarić Travnik”.

29. On 19 April 1999, the Ministry of Urbanism, Regional Planning, and Environmental Protection wrote to Travnik Municipality regarding the request of the Catholic Archdiocese of Vrhbosna. The letter states that the requested transfer is prohibited under the Law on Transfer of Real Property.

30. On 23 October 2001, the Catholic Archdiocese of Vrhbosna sent a letter to Travnik Municipality requesting repossession of all Catholic Church property. According to this letter, on 25 September 2001, a Commission established by the Central Bosnia (Središnja Bosna) Canton unanimously adopted a proposal to have a procedural decision issued for repossession of all Catholic Church property that had been nationalised. The letter lists the properties to be repossessed under the Commission’s proposal.

31. On 2 February 2002, Monsignor Dr. Pero Sudar, on behalf of the Catholic Archdiocese of Vrhbosna, wrote to the head of Travnik Municipality, Mr. Besim Halilović, listing the property the Catholic Church desired to have returned. The letter states that, upon return of these properties, the Catholic Church would agree, under acceptable conditions, to the seizure of some land for the construction of a new high school in Travnik.

B. Evidence given at the public hearing

1. Mrs. Izeta Mameledija, Chief of the Department for Urbanism, Construction, Property, Legal Affairs, and Cadaster, Travnik Municipality

32. Ms. Mameledija stated that she began working in her present position on 28 October 2000, and that in 1997 and 1998 she was not professionally involved in governmental activities. She stated that she had not seen the 19 September 1997 Executive Board conclusion prior to her meetings with the Federation representative regarding this case.

33. Ms. Mameledija professed indirect knowledge that large parcels of land had not been returned to the Islamic Community. According to available information, approximately 1200 square meters of business premises were returned, none of which were for general use.

34. Ms. Mameledija stated that she did not take part in the negotiations between the Catholic Archdiocese of Vrhbosna and Travnik Municipality, but that she was present at the July 2002 session of the Executive Board at which the procedural decision requested by the Catholic Archdiocese of Vrhbosna was not issued. She stated her opinion that the requested decision had no legal basis and was deficient because it failed to specifically describe the property to be returned. She also mentioned the problem of accommodating the existing high school students as a reason the proposed decision was denied and stated that she is not aware of any possibility of accommodating the existing schools elsewhere.

35. Regarding the return of a Medresa school facility to the Islamic Community, Ms. Mameledija stated that that property is registered with Šipad Komerc company, which she believed was a joint stock company. The property was in social ownership with a right of disposal to Šipad Komerc, which had used it as a furniture showroom. It was later used by the army. She testified that Šipad Komerc transferred the right of disposal to the Islamic Community by a contract. She stated her opinion that she did not think there was a legal basis for returning that property to the Islamic Community.

36. She stated that her department had no existing specific plan for the construction of a new school and that there was no precise location for such a facility. If a location could be found, however, legal procedures would allow for the project to move forward. She stated that lack of money and available space had hindered the construction of a new secondary school, but that good will existed if a site could be found.

37. Regarding the construction of a new Medresa school in front of the existing one, Ms. Mameledija stated that she could not commit herself to testimony regarding that construction. She stated, however, that the building had been located and covered, although construction was not finished.

38. She stated that the Islamic Community in Travnik Municipality claims rights to 130,000 square meters of land. She stated that some business premises were returned to the Islamic Community between 1996 and 1998, and that part of the Gymnasium building was returned to the Catholic Community in 1998. No other property was returned to the Catholic Archdiocese of Vrhbosna. She stated her opinion that all allocations for temporary use in anticipation of the passage of a law on restitution were made without legal basis, and that the only legal basis could be in the Law on Restitution.

2. Mr. Enver Beganović, former President, Executive Council of Travnik Municipality

39. Mr. Beganović stated that he was President of the Executive Board of Travnik Municipality in 1996 and that at the end of 1996 he became Mayor. He stated that he did not recall the exact dates during which he served as Mayor. He remembered the 19 September 1997 decision of the Executive Board and confirmed the signature on the document as his, although he could not recall the capacity in which he signed it. Mr. Beganović stated that he signed thousands of acts and could not remember the details of each.

40. He further confirmed that, at the time the 19 September 1997 decision was taken, a Transitional Executive Board was sitting in Travnik Municipality. He could not, however, recall the national or ethnic composition of the transitional council.

41. He characterised the 19 September 1997 decision as being of a general nature. He stated that, pursuant to that decision, properties that could be returned without disturbing existing users had been returned to the Islamic Community for use, pending the Law on Restitution. Each individual case, however, had its own specific administrative act.

42. Regarding the return of the Medresa school facility, Mr. Beganović said it occurred pursuant to an agreement between Šipad Komerc and the Islamic Community. He believed that Šipad Komerc was held by a mix of public and private capital, that it came into possession of the building long before the war, and that it invested large amounts of money to construct a furniture showroom. He stated that Šipad Komerc removed goods during the war and that the space had been vacant before the Islamic religious school formed there. He further stated that Travnik Municipality served as a guarantor of the agreement between Šipad Komerc and the Islamic Community, ensuring that the agreed transaction would be realised. Both parties to the transaction came to the Municipality seeking such a guarantee.

43. Regarding the siting of a new school in Travnik, Mr. Beganović stated that it had been discussed at the state level, but not on the Travnik Municipality level. He stated that a discussion had been conducted about constructing a new secondary school next to the elementary school in Travnik, so that the entire Gymnasium building could be returned to the Catholic Community for its use. He did not know why this plan was not realised, although there was a strong desire that the problem be solved. He testified that it was a problem of finances, not of will.

44. Mr. Beganović testified that all secondary schools in the territory of Travnik Municipality are currently located in the Gymnasium building, with the exception of a secondary technical school nearby. Primary schools are located throughout the Municipality.

45. Mr. Beganović stated that, excluding the Medresa facility, more property had been returned to the Catholic Community than to the Islamic Community.

3. Mr. Adil Lozo, Attorney, representing the Islamic Community of Travnik

46. Mr. Lozo stated that he has strong ties with the Islamic Community and that he was the President of the Islamic Community in Travnik from 1990 until September or October 1997. He stated that the 19 September 1997 decision of the Executive Board had never been officially delivered to the Islamic Community and is not in its archives. He stated that he saw it for the first time when it was attached to the application submitted against the Federation of Bosnia and Herzegovina in this case. He stated that the Islamic Community did not request all that is stated in the conclusion of the Executive Board, and that it was given with no request. He further stated that the Islamic Community had, on 3 December 2002, prepared a request that the decision be rendered out of force. He believes the 19 September 1997 conclusion has been used against the Islamic Community for political purposes.

47. Mr. Lozo testified that property was returned to the Islamic Community's possession by individual procedural decisions that only provided for ceding for temporary use. The 19 September 1997 conclusion is general and declares the will of the Executive Board, and, according to Mr. Lozo, does not provide the basis for ceding any property for temporary use. He acknowledged, however, that in some of the individual decisions ceding pieces of property the 19 September 1997 conclusion is expressly mentioned as the basis for the issuance of the procedural decisions.

48. Mr. Lozo stated that, beginning in 1990, the Islamic Community began collecting information relating to nationalised property in preparation for the restitution process. He testified that the total area of land owned by the Islamic Community before nationalisation was 128,000 square meters. Mr. Lozo estimates that, through restitution, it will be possible to obtain return of between 1000 and 1500 square meters of business premises for the Islamic Community. After classifying its nationalised properties, the Islamic Community requested that a small portion of it be returned immediately to its possession in order to collect profits until the Law on Restitution would be passed.

After possession of these properties was returned, the Islamic Community collected the rents from the ongoing business operations. The Islamic Community currently has approximately 1000 documents organised and waiting for the restitution process.

49. With regard to the Medresa school facility, Mr. Lozo testified that it had been nationalised in 1959 and later served as an institution for the mentally ill. In 1985, the right of disposal of the abandoned property was transferred to Šipad Komerc, which renovated the building and opened a department store showroom. In 1990, the Islamic Community began negotiations with Šipad Komerc to take over the property. During the war, the property was abandoned and used to house war refugees. In 1994, the vacant facility was again renovated to be used as a school, and Šipad Komerc and the Islamic Community entered into a contract by which possession was transferred to the latter. According to Mr. Lozo, this contract was signed in 1996 or 1997, and Šipad Komerc was only interested in the assets invested in the building's renovation. The Islamic Community did not pay any money to Šipad Komerc, but agreed to allow Šipad Komerc the use of certain other property possessed by the Islamic Community and subject to restitution. The Islamic Community does not pay Šipad Komerc for the ongoing use of the premises. Mr. Lozo stated that Travnik Municipality was involved in the talks between Šipad Komerc and the Islamic Community.

4. Mr. Nikola Lovrinović, representing the Catholic Community of Travnik

50. Mr. Lovrinović stated that it was obvious that the Islamic Community had succeeded in obtaining decisions from Travnik Municipality authorities for the return of a large portion of their property for use pending the passage of a Law on Restitution.

51. Mr. Lovrinović testified that between 500 and 600 pupils have been turned away from the Catholic Education Center due to lack of space. He stated that it is the only school in the town of Travnik that uses Croatian language in its instruction. He stated his opinion that the Catholic Education Center plays a serious and irreplaceable role in the return of Croat families to the area. He stated his belief that if the Gymnasium building were returned in its entirety to the Catholic Community for its use, the problem of lack of space and the other problems surrounding the school would be solved.

52. Mr. Lovrinović stated that, before the armed conflict, Travnik Municipality had a population of approximately 33,000 Bosniaks, 26,000 Croats, and 7700 Serbs. He further stated that approximately 19,000 Croats were banished from Travnik Municipality in 1993, and that the process of return began in 1994. According to non-confirmed data, he believes that between 8000 and 10,000 Croats have not returned to their homes in Travnik Municipality.

53. Mr. Lovrinović stated his belief that the Transitional Municipal Council that issued the 19 September 1997 Conclusion comprised members of only one national or ethnic background.

IV. RELEVANT DOMESTIC LAW

A. Law on Restitution

54. No Law on Restitution has been enacted in Bosnia and Herzegovina, although legislation regarding restitution of property nationalised since 1918 has been discussed extensively before the legislative bodies. Various draft laws have been circulated.

B. Decisions of the High Representative on Socially-Owned Real Property

1. Decision of 26 May 1999

55. On 26 May 1999, the High Representative issued a Decision suspending the power of local authorities in the Federation and the Republika Srpska to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities.

56. The Decision of 26 May 1999 states, in pertinent part, as follows:

> "Notwithstanding the provision of any other law, state property (including former socially-owned property, but excluding socially owned apartments) may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used on April 6, 1992 for cultural or religious services, or if it was used by natural persons for residential purposes, business activities, or agriculture.
>
> "Any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work.
>
> "This Decision does not apply to transactions for the purposes of restitution to pre-nationalisation owners, or for the purposes of privatisation, in accordance with Entity laws specifically regulating these subjects."

57. The Decision of 26 May 1999 entered into force immediately and remained in force until 31 December 1999 (Official Gazette of the Federation of Bosnia and Herzegovina - hereinafter "OG FBiH" - no. 20/99). On 31 December 1999, the High Representative extended the validity of the Decision of 26 May 1999 until 30 June 2000.

2. Decision of 27 April 2000

58. On 27 April 2000, the High Representative issued a Decision on socially-owned real property (Official Gazette of Bosnia and Herzegovina - hereinafter "OG BiH" - no. 13/00; OG FBiH no. 17/00; Official Gazette of the Republika Srpska - hereinafter "OG RS" - no. 12/00). The Decision of 27 April 2000 revoked and superseded the Decision of the High Representative of 26 May 1999 and the Decision of 31 December 1999, which extended the Decision of 26 May 1999.

59. The Decision of 27 April 2000 states, in pertinent part, as follows:

> "Notwithstanding the provision of any other law, state-owned real property, including former socially-owned property, but excluding socially owned apartments, may not be disposed of, allotted, transferred, sold, or given for use or rent, by the authorities of either Entity or Bosnia and Herzegovina.
>
> "Any decision referred to in the previous paragraph made by the authorities of the Entities after 6 April 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work.
>
> "This Decision does not apply to transactions for the purposes of restitution to pre-nationalisation owners, or for the purposes of privatisation, in accordance with Entity laws specifically regulating these subjects....
>
> "Any decision, agreement or transaction in violation of this Decision is null and void. The Office of the High Representative may, upon a clear showing by the competent authorities of an Entity or Bosnia and Herzegovina that a proposed transfer of state-owned real property is non-discriminatory and in the best interest of the public, grant a written exemption to this Decision. The burden of clearly showing that a proposed transfer of state-owned real property is non-discriminatory and in the best interests of the public rests with the competent authority requesting a written exemption to this Decision."

60. The Decision of 27 April 2000 entered into force immediately and remained in force until 31 December 2000. On 20 December 2000, the High Representative extended the validity of the

Decision of 27 April 2000 until 30 March 2001 (OG BiH no. 34/00; OG FBiH no. 56/00; OG RS no. 44/00). On 30 March 2001, the High Representative again extended the validity of the Decision of 27 April 2000 until 31 July 2002 (OG BiH no. 11/01; OG FBiH no. 15/01; OG RS no. 17/01).

61. On 31 July 2002, the High Representative issued another Decision further extending the Decision of 27 April 2000 until 31 March 2003 (OG BiH no. 24/02; OG FBiH no. 43/02; OG RS no. 49/02). The Decision of 31 July 2002 adds the following statement:

> "Further, by means of the adoption of harmonised legislation regulating the transfer and disposal of state-owned real property, including socially owned property, by a date as early as possible prior to 31 March 2003, the authorities of Bosnia and Herzegovina and its entities are to assume full responsibility for ensuring the re-allocation of state-owned real property, including formerly socially-owned property, in a non-discriminatory manner and in the best interests of the citizens of Bosnia and Herzegovina."

62. On 31 March 2003, the High Representative issued a Decision extending the 31 July 2002 ban on the allocation of socially-owned land in Bosnia and Herzegovina until 15 May 2003.

V. COMPLAINTS

63. The applicant alleges violations of Articles 9 (freedom of thought, conscience, and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights. The applicant seeks material damages in the amount of 500,000 KM for damage to the building, furniture, libraries, and other cultural materials. The applicant also appears to claim moral damages, but refrains from quantifying those damages in terms of an amount.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

1. As to the facts

64. The respondent Party states that property formerly owned by the Islamic Community in Travnik Municipality was handed over to the Islamic Community for its temporary administration and use between 1996 and the present. These properties consist of business premises, which had previously been leased by Travnik Municipality to third persons to conduct business. After this transfer, the Islamic Community became the lessor, and there was no discontinuation in the business use of the premises or any other burden placed on the lessees.

65. The respondent Party was unable to ascertain the exact space of the returned property in square meters.

66. Regarding the proposal to site a new secondary school in Travnik, the respondent Party states that realisation of this plan was stopped due to objections sent by the Catholic Archdiocese of Vrhbosna to the Service for Urbanism, Civil Engineering, and Cadaster in 1999.

2. As to admissibility

67. The respondent Party asserts that the application is inadmissible *ratione temporis* because the nationalisation and expropriation of the property from the Catholic Archdiocese of Vrhbosna occurred in 1946, long before the period for which the Chamber is competent to consider alleged human rights violations.

68. The respondent Party asserts that the application is inadmissible *ratione personae* because the Federation of Bosnia and Herzegovina is not competent to issue laws regulating restitution of property. Because such authority falls within the exclusive competence of the state of Bosnia and Herzegovina, the respondent Party argues that the application is inadmissible *ratione personae*. The

respondent Party also argues that, because the Federation of Bosnia and Herzegovina did not issue the order on confiscation of the property, the application is inadmissible *ratione personae*.

69. The respondent Party further argues that the applicant has not owned the property since 1946, and therefore cannot state a claim for interference with its property rights. Insofar as the application alleges a violation of the right to temporary ceding of the property for the purpose of use, the respondent Party asserts that the application is inadmissible *ratione materiae*.

70. The respondent Party further asserted, at the public hearing, that the applicant failed to comply with the six-month rule because the applicant provides no exact dates for the acts it complains about.

3. As to the merits

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

71. The respondent Party asserts that no actions by the Federation of Bosnia and Herzegovina or its organs have interfered with or failed to secure the applicant's property rights. According to the Federation, the only violation occurred in 1946, and it can only be remedied by the passage of a Law on Restitution at the state level.

72. The Federation states that the most effective manner of protection of ownership rights, with regard to a future Law on Restitution, would be to place the property into possession and use of the former owner until such time as the Law on Restitution is adopted. The Federation asserts that the ceding of one-third of the property to the Catholic Archdiocese of Vrhbosna has operated to this effect, and that the remaining two-thirds of the building cannot be ceded due to difficulties in relocating two public schools currently housed there. According to the Federation, there are neither adequate existing premises nor funds for construction of new facilities to relocate these schools, although some planning approval was issued in 1999. The respondent Party favours a step-by-step repossession of the property by the Catholic Archdiocese of Vrhbosna, to proceed as the currently housed institutions can be relocated, but the respondent Party states that it would not be appropriate to immediately transfer the entire building into possession of the Catholic Archdiocese of Vrhbosna because such action would dislocate 1500 pupils from their existing schools.

73. Regarding the repossession of the Medresa school by the Islamic Community, the respondent Party states that the property was owned and given by Šipad Komerc company, and could not have been given by Travnik Municipality.

74. The respondent Party further asserts that the applicant's claim that all property formerly owned by the Islamic Community was returned is factually ill-founded.

b. Article 9 of the Convention

75. The respondent Party asserts that the applicant has not presented evidence to substantiate its claim regarding the alleged violation of its right to freedom of religion under Article 9 of the Convention. The respondent Party asserts that it has fulfilled its positive obligation to secure the applicant's rights under Article 9 by ceding a part of the building to the applicant's use.

c. Discrimination

76. The respondent Party further considers that there have been no actions that could be viewed as discriminatory against the Catholic Archdiocese of Vrhbosna. In this regard, the Federation asserts that, in terms of surface area, the Catholic Community received four times the amount of property for its use as the Islamic Community.

77. The respondent Party disputes the factual allegation that all property formerly belonging to the Islamic Community was returned by Travnik Municipality. According to the Federation, only a portion of the property was returned. The 19 September 1997 conclusion of the Executive Board of Travnik

Municipality related only to that property that was listed in the request presented by the Islamic Community. Individual procedural decisions were issued when the requirements for ceding property for temporary use were met.

78. The respondent Party argues that, if there was different treatment, it was based on the objective considerations of resulting harm to existing users of the property. In the case of the Islamic Community, the Federation asserts, there was no disturbance of existing use; in the case of the Gymnasium building, there is no solution for housing the secondary school pupils who would be displaced if use rights were ceded to the Catholic Community. Thus, according to the Federation, its actions are objectively justified by the legitimate aim of protecting the public schools currently housed in the Gymnasium building. The Federation further claims that, on the territory of the Federation of Bosnia and Herzegovina, it would be practically impossible to achieve equality in repossession of property between the religious communities.

d. Compensation

79. The respondent Party asserts that the applicant's claim for material compensation in the amount of 500,000 KM is ill-founded because the damage to which the applicant refers occurred before the entry into force of the Agreement. Further, the Federation argues that the compensation claim is not sufficiently precise or substantiated by evidence.

B. The Catholic Archdiocese of Vrhbosna

1. As to the facts

80. The applicant asserts that, in its current state, the Catholic Education Center lacks sufficient space to accommodate pupils or provide parking for visitors to the church. It also discussed other problems with the premises. A street market place located near the building prevents access to the school and church. Further, the provision of certain portions of the premises to Romany families causes problems for the Catholic Education Center from the presence of waste, disabled automobiles, and animals. In addition, a faulty boiler room in the building repeatedly causes flooding to the kitchen and basement areas of the Center, and requests for repairs have gone unanswered. Cascades constructed on the Lašva River by the fishing association with Municipal permission caused further flooding of the basement.

81. Regarding the Catholic Archdiocese of Vrhbosna's efforts to obtain possession of the remaining portion of the Gymnasium building, the applicant states that on 29 January 1999, Travnik Municipality issued a procedural decision locating a new school on the Catholic Education Center's playground. After the Catholic Archdiocese of Vrhbosna complained to the Ombudsman and Cantonal Government that this decision violated a decision of the High Representative, the Cantonal Government founded a Commission to seek a solution between the Catholic Education Center and Travnik Municipality.

82. The applicant states that this Commission ultimately proposed a procedural decision by which the Catholic Community would receive use of its former property. At the same time, the Catholic Archdiocese of Vrhbosna would negotiate with Travnik Municipality regarding giving up land on which to locate a new high school. These proposed procedural decisions, however, were rejected by the Travnik Municipal Council.

83. The applicant further states that the Catholic Education Center has 788 pupils, with 17 primary school and 9 high school classes. Ninety percent of the pupils are the children of returnees or refugees. The facility is the only Catholic Education Center and Episcopal Preparatory in Bosnia and Herzegovina, and it serves four dioceses: Sarajevo, Mostar, Banja Luka, and Trebinje. Every Thursday, approximately 500 people come to the sanctuary situated next to the school to attend church.

84. In response to the Chamber's request, the applicant submitted a partial list of properties returned to the disposal of the Islamic Community. The applicant further pointed out that the Islamic

Community was allowed to enter into full possession of its Medresa religious education complex without a procedural decision.

2. As to admissibility

85. The applicant disputes the respondent Party's *ratione temporis* and *ratione personae* arguments concerning admissibility. According to the applicant, the discrimination complained of has occurred after the entry into force of the Agreement. With regard to both admissibility arguments, the applicant highlights the 19 September 1997 decision of the Executive Board of Travnik Municipality placing all real estate formerly owned by the Islamic Community at its disposal.

3. As to the merits

86. The applicant disputes the respondent Party's claim that the failure to return the remainder of the Gymnasium building to the applicant serves a legitimate aim. According to the applicant, representatives of the Catholic Archdiocese of Vrhbosna, Travnik Municipality, and a joint commission of the Central Bosnian Canton government developed an acceptable solution that offered long-term resolution of the issue of the high school in Travnik. The applicant asserts, however, that this proposal was not accepted by the Travnik Municipal Council due to lack of political will. The applicant further asserts that Travnik Municipality has alternative solutions available to it for housing the public schools.

87. The applicant asserts that the treatment of the Catholic Community in Travnik Municipality presents a significant obstacle to the return of Catholic believers who were displaced from the region during the armed conflict.

4. Compensation

88. With regard to its claim for material compensation, the applicant admits that it did not submit specific evidence, but it asserts that the amount requested is small, even in comparison to the funds already expended to restore the portion of the building it currently occupies.

VII. OPINION OF THE CHAMBER

A. Admissibility

89. Before considering the merits of the case, the Chamber must decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII of the Agreement.

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

90. Although the applicant did not directly allege violations of Article 1 of Protocol No. 1 to the Convention, the Chamber transmitted the case to the respondent Party for its observations regarding this Article.

91. Considering that the expropriation of the property from the applicant took place in 1946, long before the entry into force of the Agreement on 14 December 1995, the Chamber concludes that the original taking of the property in the nationalisation process is outside the Chamber's competence *ratione temporis*.

92. Further, there is no restitution law in effect. Nor is it clear that the applicants will be the beneficiaries of any restitution law to be adopted in the future. At best, the applicant has only a speculative expectation, which cannot give rise to a right under Article 1 of Protocol No. 1 to the Convention (see, e.g., Case no. CH/01/6940, *Đuherić et al.*, decision on admissibility of 8 March 2002). The Chamber further notes that, to the extent the applicant may allege a right to a temporary allocation of the property for its use, no such right is protected under Article 1 of Protocol

No. 1 to the Convention. Thus, such claims, including any related discrimination claims, fall outside the Chamber's competence *ratione materiae*.

93. Having regard to the above, the Chamber considers that it is not necessary to consider the respondent Party's arguments that the application is inadmissible *ratione personae*.

94. Pursuant to Article VIII(2)(c), the Chamber declares the application inadmissible under Article 1 of Protocol No. 1 to the Convention, both directly and with regard to alleged discrimination, as being incompatible with the Agreement.

2. Article 9 of the Convention

95. The applicant alleges direct interference with its right to freedom of religion under Article 9 of the Convention. In this regard, the Chamber takes notice of the difficulties faced by the Catholic Church in Travnik after its property was expropriated in the nationalisation process. Indeed, it appears that, beginning in 1946, the Catholic dioceses in Bosnia and Herzegovina had to send prospective priests to the Republic of Croatia for their preparatory training. As stated above, however, this taking of property in the nationalisation process falls outside the Chamber's competence *ratione temporis*. The Chamber further notes that Travnik Municipality's ceding of property to the Islamic Community could not, in and of itself, effect any direct interference with the applicant's freedom of religion. Also, the 1998 return of 5869 square meters of the Gymnasium building appears to have improved the applicant's situation somewhat, in that the Archdiocese of Vrhbosna is now able to conduct some religious training in Travnik Municipality.

96. Having regard to the above, the Chamber considers the applicant's allegations regarding interference with its freedom to practice its religion to be manifestly ill-founded. Therefore, pursuant to Article VIII(2)(c), the Chamber declares the application inadmissible in regard to a direct violation of Article 9 of the Convention.

3. Six months rule in relation to discrimination in the enjoyment of the right to freedom of religion guaranteed by Article 9 of the Convention

97. The respondent Party argues that the applicant provides no exact dates regarding impugned acts and that the application is therefore inadmissible under Article VIII(2)(a) because the applicant failed to introduce it within six months of the domestic decision or event complained of. With regard to the applicant's remaining claims of discrimination, the Chamber notes that the applicant alleges an ongoing discriminatory situation. The Chamber is unable to identify any "final decision" whereby, for purposes of the rule, the six-month period can be considered to have commenced; moreover, the alleged discrimination has not come to an end. Under the circumstances, the Chamber considers the situation to be of a continuing nature, and the six-month rule has no application (*See, e.g.*, CH/98/126, *Marić and Others against the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits of 10 March 1999, para. 32, Decisions January-July 1999). The Chamber therefore rejects the respondent Party's suggestion that the case be declared inadmissible under Article VIII(2)(a).

98. Having no further grounds for declaring the case inadmissible, the Chamber finds the application, insofar as it alleges discrimination in the applicant's right to freedom of religion under Article 9 of the Convention, admissible.

4. Conclusion as to admissibility

99. Having regard to the above, the Chamber declares the application admissible against the Federation of Bosnia and Herzegovina with regard to allegations of discrimination in the applicant's right to freedom of religion, and inadmissible against the Federation as to all other claims.

B. Merits

1. Discrimination in the enjoyment of the right to freedom of religion guaranteed by Article 9 of the Convention

100. Under Article II(2)(b) of the Agreement the Chamber has jurisdiction to consider:

> "alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex ...".

The respondent Party is obliged to ensure to everyone within its jurisdiction, without discrimination, the rights guaranteed in the Agreement.

101. The Chamber notes that Catholic believers in Travnik Municipality have not been prevented from gathering in worship, and the Catholic Church has been able to run its education program, albeit under strained conditions. As stated above, the Chamber will not consider the applicant's allegations of a direct violation of its right to freedom of religion under Article 9 of the Convention. A finding of a direct violation, however, is not a prerequisite to a finding of discrimination with regard to the enjoyment of the rights protected by that Article.

102. The applicant alleges that the Archdiocese of Vrhbosna and members of the Catholic Community are subjected to an ongoing pattern of discrimination in Travnik Municipality. In particular, the applicant alleges discrimination relating to its freedom of religion, especially in regard to its relative inability to provide religious education as compared to local Islamic religious organisations. The applicant's complaints also relate to the general conditions of its facility and the lack of space to properly accommodate pupils and visitors to its church. In the applicant's view, the discrimination arises from decisions of Travnik Municipality to return nationalised property formerly owned by the Islamic Community to the Islamic Community for its use. In particular, the applicant refers to the 19 September 1997 decision of the Executive Board of Travnik Municipality stating that all such property should be returned, along with subsequent procedural decisions by which some 1200 square meters of commercial property actually was returned to the Islamic Community for its use.

103. The Chamber will consider this allegation of discrimination under Article II(2)(b) of the Agreement in relation to Article 9 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> "2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

104. In examining whether there has been discrimination contrary to the Agreement, the Chamber has consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations (see, e.g., CH/98/892, *Mahmutović*, decision on admissibility and merits delivered on 8 October 1999, Decisions August-December 1999; CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, Decisions and Reports 1998). Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin (see, e.g., CH/96/29, *The Islamic Community in Bosnia and Herzegovina*, decision on admissibility and merits of 11 May 1999, paragraphs. 154 et seq., Decisions January-July 1999).

105. The Chamber considers that the applicant and the Islamic Community in Travnik Municipality

are relevantly similar for purposes of the discrimination analysis.

106. Before scrutinising the alleged acts and omissions of the respondent Party's authorities, the Chamber finds it necessary to recall the undertaking of the Parties to the Agreement to "secure" the rights and freedoms mentioned in the Agreement to all persons within their jurisdiction. This undertaking not only obliges a Party to refrain from interfering with the enjoyment of those rights and freedoms, but also imposes on that Party a positive obligation to ensure and protect those rights (see CH/96/1, *Matanović*, decision on merits of 11 July 1997, paragraph 56, Decisions July-December 1997).

107. The Travnik Municipality authorities' decision not to cede the entirety of the Gymnasium building to the applicant is clearly imputable to the respondent Party, as are Travnik Municipality's acts of ceding certain property to the Islamic Community for its use. The 19 September 1997 Executive Board decision, which offers a return of all nationalised property to just one religious community, appears discriminatory on its face. That document and the resulting procedural decisions transferring use rights of certain property to the Islamic Community raise serious questions regarding officially sanctioned differential treatment in Travnik Municipality.

108. Of greater relevance, however, to the question of differential treatment with regard to freedom of religion, is the ceding of the Medresa educational facility to the Islamic Community. The record indicates that the building housing the Medresa school was previously registered with Šipad Komerc company. According to the witness Mrs. Izeta Mameliđija, Šipad Komerc was a joint stock company, and the property was in social ownership with a right of disposal to the company. The witness Mr. Enver Beganović confirmed that Šipad Komerc was held by a mix of public and private capital, and he further testified that Travnik Municipality was involved as a guarantor of the agreement transferring the building from Šipad Komerc to the Islamic Community. The witness Mr. Adil Lozo confirmed that the Medresa school property had been nationalised in 1959, that Travnik Municipality was involved in the transfer negotiations, and that the Islamic Community does not pay for the ongoing use of the premises. The Chamber concludes, on the basis of these facts, that the partial public ownership of the property and the significant public participation in the transfer of the Medresa school to the Islamic Community makes that action clearly imputable to the respondent Party. The Chamber further notes that a new Medresa school has apparently been sited and is under construction in Travnik Municipality, although the prior land ownership and other circumstances surrounding this property are unclear.

109. The Catholic Archdiocese of Vrhbosna first requested return of the entire Gymnasium building in 1995; a portion of it, approximately 5869 square meters, was returned in 1998. According to the applicant, the size and condition of that portion of the property are not adequate for the Archdiocese of Vrhbosna to effectively carry out its educational mission. For this reason it has had to turn away significant numbers of prospective students, many of whom are former refugees who have returned to the Travnik area.

110. Thus, it appears that the Islamic Community has received an entire school and some commercial property, while the applicant has received a portion of its former school. Having regard to these facts, the Chamber finds it established that Travnik Municipality has subjected the applicant, and the Catholic Community, to differential treatment as compared to the Islamic religious community, with particular regard to religious education. In these circumstances, the burden is on the respondent Party to show that the differential treatment has been objectively justified in pursuance of a legitimate aim by means proportional to that aim.

111. The respondent Party cites a need to relocate the public schools housed in the Gymnasium building, and it cites a lack of available real estate and funding for its failure to do so. The need to relocate these schools is clearly a legitimate aim.

112. The Chamber finds, however, that a period of seven years is an unacceptably long time for Travnik Municipality to claim an inability to carry out this aim. The significant delay in relocating the public schools, and thereby creating the conditions for accomodating the applicant's needs, is unjustified and has placed an undue burden on the applicant. It has had an impact on the applicant's freedom to practice religion, with particular regard to its ability to provide religious education. Travnik

Municipality's extended failure to find any means to remedy the differential treatment is out of proportion to any legitimate aim claimed by the respondent Party.

113. In light of all these facts, the Chamber finds that there is no reasonable and objective justification for the differential treatment. The Chamber further finds that the authorities in Travnik Municipality have either actively engaged in or passively tolerated discrimination against the applicant and the Catholic Community due to their religion and ethnic origin. The attitude and actions of Travnik Municipality have hampered — and continue to hamper — the applicant's enjoyment of its right of freedom of religion as defined in the Convention.

114. Moreover, the discriminatory situation in Travnik Municipality appears to discourage and therefore obstruct the return of Croat refugees and other Catholic believers to the area. The Chamber recalls that facilitating refugee returns is one of the central goals of the Dayton Peace Agreement (see generally the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7).

115. In conclusion, the respondent Party has discriminated against the applicant with regard to its enjoyment of the right of freedom of religion guaranteed by Article 9 of the Convention.

VIII. REMEDIES

116 Under Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the respondent Party to remedy breaches of the Agreement that it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), and provisional measures.

117. The applicant, in essence, requests the allocation of the remaining portion of the Gymnasium building and the surrounding land for its use. The applicant also seeks material damages in the amount of 500,000 KM and moral damages in an unspecified amount.

118. The Chamber has found the respondent Party to be in breach of its obligation to ensure to everyone within its jurisdiction, without discrimination, the right to freedom of religion guaranteed by Article 9 of the Convention. The discrimination found has been directed against the applicant and, more generally, against the Catholic Community in Travnik Municipality. The prohibition of discrimination is a central objective of the General Framework Agreement to which both the Chamber and the parties must attach particular importance. The respondent Party is already obliged by the Agreement to enable the applicant to enjoy, without discrimination, now and in the future, the rights secured by the Agreement. The Chamber does not, therefore, consider it necessary to make an order in general terms in that respect, but will order actions by the respondent Party to remedy the discriminatory treatment of the applicant.

119. The Chamber finds it appropriate to order the respondent Party to expedite the relocation of the public schools housed in the Gymnasium building, in order to permit ceding of the remaining portions of that building to the applicant's use in anticipation of the eventual passage of a law on restitution. In this regard, the Chamber will order the respondent Party to issue relevant and binding decisions on these matters within six months. Finally, the respondent Party shall cede the remaining portion of the Gymnasium building to the applicant as soon as possible, but no later than twelve months from the date of this decision.

120. Having regard to the above, the Chamber declines to award monetary relief in the form of material and moral damages sought by the applicant.

121. Further, the Chamber will reserve the right to order additional remedies in this case as it deems warranted.

IX. CONCLUSIONS

122. For the reasons set out above, the Chamber decides:

1. unanimously, to declare inadmissible the applicant's complaints relating to its property rights guaranteed by Article 1 of Protocol No. 1 to the Convention;

2. unanimously, to declare inadmissible the applicant's complaints relating to a direct violation of the right to freedom of religion guaranteed by Article 9 of the Convention;

3. unanimously, to declare admissible the applicant's complaints relating to discrimination in the enjoyment of the right to freedom of religion guaranteed by Article 9 of the Convention;

4. by 4 votes to 3, that the applicant has been discriminated against in the enjoyment of its right to freedom of religion guaranteed by Article 9 of the Convention, the respondent Party thereby being in violation of Article I of the Agreement;

5. unanimously, to order the respondent Party to expedite the relocation of the public schools housed in the Gymnasium building, in order to permit ceding of the remaining portions of that building to the applicant's use;

6. by 6 votes to 1, to issue relevant and binding decisions relating to the relocation of the public schools and the ceding of the remaining portion of the Gymnasium building within six months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

7. by 6 votes to 1, to cede the remaining portion of the Gymnasium building to the applicant as soon as possible, but no later than twelve months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. unanimously, to deny the applicant's request for material and moral damages in the form of monetary relief;

9. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber, not later than six months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken to comply with the above orders; and

10. unanimously, to reserve the right to order additional remedies in this case as it deems warranted.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel