DECISION ON ADMISSIBILITY

Case no. CH/01/8003

Ivica TUKARIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 May 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DEMEO, Deputy Registrar

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

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

I. INTRODUCTION

1. This case concerns a dispute between the applicant, the pre-war owner of real property in Banja Luka, and M.V., the pre-war owner of real property in Zagreb, over their contract on exchange of property concluded on 12 October 1992. Neither party disputes the validity of the contract on exchange, but rather, they disagree on the scope of the contract. M.V. claims that the contract covers not only the applicant's property on cadastral plot no. 1620 (as specified in the written contract on exchange) but also the applicant's property on cadastral plot no. 1619 (a different piece of real estate not specified in the contract on exchange). M.V. possesses the house located on plot no. 1620, and he rents the house located on plot no. 1619 to a third party. The applicant lives in Vojnić in Croatia. The dispute between M.V. and the applicant over the scope of the contract on exchange is presently pending before the domestic courts.

2. On 2 May 2000, the Commission for Real Property Claims ("CRPC") issued two decisions confirming that as of 1 April 1992, the applicant was the "*bona fide* possessor" of both real estates. In accordance with the Law on Implementation of CRPC Decisions, the applicant asked the Ministry for Refugees and Displaced Persons, Department in Banja Luka ("Ministry"), to enforce one of the CRPC decisions relating to the real property in dispute on cadastral plot no. 1619. On 20 June 2001, the Ministry issued a conclusion on enforcement of the CRPC decision and subsequently scheduled M.V.'s eviction from the house in question.

3. On 10 July 2001, M.V. introduced an application to the Chamber concerning the same matter. On 23 July 2001, deciding on a request for provisional measures filed by M.V., the Chamber issued an order for provisional measures preventing the enforcement of the CRPC decision of 2 May 2000 against M.V. On 7 February 2003 the Chamber delivered its decision on admissibility and merits in the case introduced by M.V.. The Chamber found a violation of M.V.'s right to peaceful enjoyment of possessions and ordered the Republika Srpska to "ensure that all administrative proceedings, including enforcement proceedings, are suspended ex officio by the administrative bodies pending the final (pravosnažno) decision of the judiciary in the case initiated by [M.V.]". The Republika Srpska has informed the Chamber that it has complied with this order.

4. The application raises issues under Article 6 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention, and of discrimination in the enjoyment of these rights.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was received and registered by the Chamber on 24 September 2001. On 16 October 2001, the applicant submitted a supplement to his application.

6. In accordance with Rule 29(1) of the Chamber's Rules of Procedure, the application was initially considered by the Second Panel of the Chamber.

7. In the application, the applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary steps to ensure that M.V. does not sell the house located on plot no. 1619. On 9 November 2001, the Acting President of the Second Panel issued the requested order for provisional measures for the period of one month. This order expired on 10 December 2001.

8. On 12 November 2001, the Chamber transmitted the application to the respondent Party for its observations under Article 1 of Protocol No. 1 to the Convention and Article 14 of the Convention in relation to Article 1 of Protocol No. 1 to the Convention.

9. On 27 February 2002, the respondent Party submitted its written observations on the admissibility and merits of the application.

10. On 9 April 2002, the applicant submitted reply observations to the respondent Party's submission of 27 February 2002.

11. The applicant submitted his additional observations on 17 April 2002, 18 July 2002 and 22 July 2002.

12. In accordance with Rule 29(2) of the Chamber's Rules of Procedure[1], the Second Panel decided to refer the case to the plenary Chamber on 4 September 2002.

13. Although the plenary Chamber did not join any of the applications, on 2 September 2002, it decided to hold a joint public hearing in this case, along with three other applications in case nos. CH/02/9130 *Stana Samardžić v. the Republika Srpska*, CH/02/9040 *Neđeljko Latinović v. the Republika Srpska*, and CH/02/7224 *Milenko Vučkovac v. the Republika Srpska*. The Chamber intended the public hearing to focus on the issue of contracts on exchange of socially-owned property and privately owned property concluded after April 1992, as provided for in both the Law on Cessation of the Application of the Law on Abandoned Property of the Republika Srpska (see paragraphs 46 and 47 below) and the Law on Implementation of CRPC Decisions of the Republika Srpska (see paragraphs 41-45 below).

14. On 18 September 2002, the plenary Chamber invited the applicant and the respondent Party to the public hearing on the admissibility and merits of the application, scheduled for 9 October 2002.

15. On 18 September 2002, the Chamber also invited the Organisation for Security and Cooperation in Europe ("OSCE"), the Office of the High Representative ("OHR"), the United Nations High Commissioner for Refugees ("UNHCR"), and the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") to participate in the public hearing as *amici curiae*. The Chamber asked them to inform it within one week from the date of the invitation letter whether they intend to accept the invitation. On 24 September 2002, the OSCE confirmed its participation as *amicus curiae* at public hearing, and the OHR confirmed its participation as *amicus curiae* on 25 September 2002. The CRPC and the UNHCR never responded to the Chamber's invitations.

16. The respondent Party submitted additional written observations on 8 October 2002.

17. On 9 October 2002 the Chamber held a public hearing in Sarajevo. The applicant was represented by his son, Borislav Tukarić, who was in turn represented by Svetozar Davidović, a lawyer. The respondent Party was represented by its Agent Mr. Dupor. The Organization for Security and Cooperation in Europe, Mission to BiH (OSCE), acting as *amicus curiae*, was represented by Ms. Lejla Mrkonja and Ms. Božana Vasković, National Legal Advisors. The Office of the High Representative, also acting as *amicus curiae*, was represented by Ms. Tanja Rakušić-Hadžić, Legal Officer, and Ms. Gordana Osmančević, Property Officer.

18. On 18 October 2002, the Chamber received a written *amicus curiae* submission from OHR and OSCE, which was forwarded to the parties on 29 October 2002. The respondent Party submitted additional written observations on 29 October 2002.

19. On 10 April 2003 the Chamber received additional observations from the applicant, which were forwarded to the respondent Party.

20. The Chamber deliberated on the admissibility and merits of the case on 6 September, 10 October, 9 November, 6 December 2002 and on 6 January and 9 May 2003. On the latter date it adopted the present decision.

[1] Rule 29(2) of the Chamber's Rules of Procedure provides, in pertinent part: "Where a case pending before a Panel raises a serious question as to the interpretation of the Agreement …, the Panel may at any time before taking a final decision relinquish jurisdiction in favour of the Plenary Chamber".

III. FACTS

21. On 12 October 1992, the applicant and Milenko Vučkovac ("M.V.") concluded a contract on exchange of real property. According to the written contract, M.V. exchanged his real property located in Zagreb, Republic of Croatia – Ivanja Rijeka, Viktora Bubnja Street no. 10. The applicant exchanged his property located in Banja Luka, the Republika Srpska – Marka Lipovca Street no. 14, constructed on cadastral lot no. 1620, registered in deed of title no. 1138, Budžak Municipal Cadastre. The applicant took possession of M.V.'s house in Zagreb after 12 October 1992 and then transferred the exchanged property to his son Borislav Tukarić by a donation. His son subsequently registered his name in the land books. Since 1995, the applicant has lived in a house in Vojnić, Croatia.

22. According to the applicant's statements, in 1992 M.V. initiated civil proceedings before the First Instance Court in Banja Luka seeking confirmation of the scope of the contract on exchange as covering not only the applicant's property on cadastral plot no. 1620 located in Banja Luka, Marka Lipovca Street no. 14 (as designated in the written contract on exchange), but also another property owned by the applicant on cadastral plot no. 1619 located in Banja Luka, Marka Lipovca Street no. 14 A (different real property not designated in the contract on exchange).

23. The applicant and his wife remained in the house on plot no. 1619 until 1995, when they left for Croatia. According to the statement of the applicant, which is disputed by M.V., their departure was caused by the general hostility against Croats in Banja Luka at that time, resulting in shotgun and bazooka shooting against the house, as well as by duress specifically exercised by M.V. The applicant alleges that in mid August 1995 he and his wife were thrown out of the house by a family of Serb origin displaced from an area recently taken by the Croatian armed forces.

24. On 4 June 1996 the First Instance Court in Banja Luka issued a decision finding that the contract on exchange of real property concluded between the plaintiff (M.V.) and the defendant (the applicant) was valid and confirming that the contract on exchange covered the defendant's property in Banja Luka at Marka Lipovca Street no. 14, including the residential building with the appended facilities and yard constructed on cadastral plot nos. 1619 and 1620 entered in the title of deed no. 1138 of the Budžak Municipal Cadastre. Since then, M.V. has been using the house located on plot no. 1620, whereas he rents the house located on plot no. 1619 to a third person.

25. The applicant appealed against the decision of 4 June 1996; however, on 23 April 1997, the District Court in Banja Luka refused the appeal and confirmed the decision of 4 June 1996.

26. The applicant then filed a request for review against the second instance judgment of 23 April 1997, which was refused by the Supreme Court of the Republika Srpska on 19 August 1998.

27. On 2 July 1999 the applicant submitted a proposal for renewal of proceedings. In this proposal he argued that the proceedings should be renewed because of serious flaws relating to the power of attorney of his representative during the proceedings before the Banja Luka First Instance Court, and because he had not been given equal opportunity to be heard during the proceedings. On 1 March 2000 the First instance Court in Banja Luka refused the proposal, finding that the procedural shortcomings complained of by the applicant did not exist or in any case did not constitute sufficient grounds to re-open the case. The applicant appealed against the decision on 20 June 2000.

28. On 2 May 2000 the CRPC issued two decisions, nos. 701 – 4325 – 1/1 and 701 – 4325 – 2/1. These decisions confirm that on 1 April 1992, the applicant was the *bona fide* possessor of the real estate registered as cadastral plots k.č. 1620 and k.č. 1619, entered in the title of deed no. 1138 of the Budžak Municipal Cadastre – Banja Luka.

29. M.V. submitted a request for review of the CRPC decisions of 2 May 2000. On 5 December 2000 the CRPC refused the request for review.

30. On 29 December 2000 M.V. initiated proceedings before the Court of First Instance in Banja Luka to seek confirmation of the validity of the contract on exchange. M.V. asked the court to confirm

the validity of the contract on exchange concerning both the real estates registered in the cadastral plots k.č. 1620 and k.č. 1619. Also, he asked the court to order a provisional measure to prevent any change concerning the ownership over or possession of the disputed real estate in Banja Luka. The applicant filed a counter-claim in these proceedings.

31. In accordance with the Law on Implementation of CRPC decisions, the applicant asked the Ministry for Refugees and Displaced Persons, Department Banja Luka ("Ministry") to enforce one of the CRPC decisions of 2 May 2000— the one relating to the real property in dispute on cadastral plot no. 1619. On 20 June 2001 the Ministry issued a conclusion on enforcement of the CRPC decision no. 701 – 4325 – 2/1 concerning the real estate registered as cadastral plot k.č. 1619. The Ministry subsequently scheduled M.V.'s eviction from the house on cadastral plot no. 1619 for 23 July 2001.

32. On 4 July 2001 M.V. appealed against the conclusion of 20 June 2001 to the Ministry for Refugees and Displaced Persons.

33. On 16 July 2001 the Ministry of Management and Local Self–Management issued a decision by which the Ministry for Refugees and Displaced Persons was ordered to issue, within three days, a conclusion on postponing the enforcement of the decision of 20 June 2001, until the relevant court decided the dispute pending between M.V. and the applicant, in accordance with the relevant provisions of the Law on Administrative Procedure.

34. On 10 July 2001 M.V. applied to the Chamber. On 23 July 2001 the President of the Second Panel ordered the Republika Srpska, as a provisional measure, to take all necessary steps to prevent the enforcement of the CRPC decision.

35. On 23 August 2001 the District Court in Banja Luka refused the appeal of 20 June 2000 and confirmed the decision of 1 March 2000 (rejecting the applicant's proposal for renewal of proceedings). The District Court mentioned that, under the provisions of the Law on Civil Proceedings governing requests for renewal of proceedings, it is not competent to consider the CRPC decisions submitted to it by the applicant.

36. On 7 September 2001 the Ministry of Management and Local Self–Management issued a decision by which the decision of the same Ministry of 16 July 2001 was put out of force and the Ministry was free to schedule a new date for enforcement.

37. On 7 February 2003 the Chamber delivered its decision on admissibility and merits in the case introduced by M.V.. The Chamber found a violation of M.V.'s right to peaceful enjoyment of possessions and ordered the Republika Srpska to "ensure that all administrative proceedings, including enforcement proceedings, are suspended ex officio by the administrative bodies pending the final (pravosnažno) decision of the judiciary in the case initiated by [M.V.]". The Republika Srpska has informed the Chamber that it has complied with this order.

38. As of 10 April 2003, the case concerning the validity of the exchange contract initiated by M.V. on 29 December 2000 is still pending before the First Instance Court in Banja Luka. According to the applicant, scheduled hearings are postponed again and again, so that no progress is made.

IV. RELEVANT LEGAL PROVISIONS

A. General Framework Agreement for Peace in Bosnia and Herzegovina – Annex 7, Agreement on Refugees and Displaced Persons

39. Annex 7 to the General Framework Agreement, entitled the Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. In accordance with Article VII of Annex 7, an Independent Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), was established.

40. The CRPC shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not enjoy possession of that property (Article XI). The CRPC shall determine the lawful owner of the property according to Article XII(1). The decisions of the CRPC are final, and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina (Article XII(7)).

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

41. Article 2 of the Law on Implementation of CRPC Decisions of the Republika Srpska, which was imposed by the Decision of the High Representative of 27 October 1999 (OG RS nos. 31/99, 2/00, 39/00 and 65/01), states that the decisions of the CRPC "are final and binding from the day of their adoption". It further provides that the decisions of the CRPC "confirm the rights to real properties of the person(s) named in the decision, and require the responsible enforcement organs to take measures as set out in this Law" and "also carry the force of legal evidence that may be used in administrative, judicial or other legal proceedings."

42. Article 13 of the Law on Implementation of CRPC Decisions of the Republika Srpska, which was imposed by the Decision of the High Representative of 27 October 1999 (OG RS nos. 31/99, 2/00, 39/00 and 65/01), in its amended form, reads as follows:

> "The competent court shall determine whether the transfer of rights to the appellant was conducted voluntarily and in accordance with the law.
>
> If the transfer of rights was conducted between 1 April 1992 and 14 December 1995, and its validity is disputed by the respondent, the burden of proof shall lie on the party claiming to have acquired rights to the property under the transaction to establish that the transaction was conducted voluntarily and in accordance with the law.
>
> If the validity of the transfer has been determined in previous proceedings which took place prior to the entry into force of this Law, the decision taken in the previous proceedings shall be null and void.
>
> The court may make whatever orders are necessary to give effect to its decision, including orders setting aside legal transactions, orders for making or erasing entries in the appropriate public books/registers, and orders lifting any order for suspension of the administrative proceedings.
>
> The relevant parties to the appeal shall notify the competent administrative body of the court's decision.
>
> The responsible administrative body shall resume enforcement proceedings as required, or discontinue proceedings in accordance with the court's decisions."

43. Article 12 of the Law on Implementation of CRPC Decisions provided (before it was amended by the Decision on the Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees, which entered into force on 29 December 2001, amending Article 12 and substituting part of its provisions with the new Article 12a, see the next paragraph):

> "…
> The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days, to prove that the right holder named in the Commission's decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive of the Commission's decision.
> Enforcement proceedings before the responsible administrative organ shall not be suspended pending the court's decision.

As an exception to the previous paragraph, the competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative organ if a verified contract on the transfer of rights was made after 14 December 1995."

44. On 4 December 2001, the High Representative imposed the Decision on the Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees, inserting, *inter alia*, a new Article 12a. It entered in force eight days after publication in the Official Gazette of the Republika Srpska on 21 December 2001 (OG RS no. 65/01).

45. The new Article 12a, in relevant part, reads as follows:

"The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days to prove that the right holder named in the Commission's decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive of the Commission's decision.

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

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

46. Article 2a of the Law on Cessation of the Application of the Law on the Use of Abandoned Property of the Republika Srpska (Official Gazette of the Republika Srpska—hereinafter "OG RS"—nos. 38/98, 12/99, 31/99, with incorporated amendments proclaimed by the Decision of the High Representative of 4 December 2001 (OG RS no. 65/01 of 21 December 2001)) provides as follows:

"The provisions of this Law shall also apply to contracts on exchange of apartments, where the exchange took place between 1 April 1992 and 19 December 1998 in accordance with the Law on Housing Relations (RS OG nos. 19/93, 22/93, 12/99 and 31/99)....

In the event that each party to the contract on exchange filed a claim for repossession before the expiry of the deadline set out in Article 16, the competent authority shall process the claims according to this Law. Notwithstanding, the competent authority in each municipality shall deem the exchange valid, if both parties give a statement reconfirming the contract on exchange, and shall revalidate the contracts on use pursuant to Article 27 paragraph 2, point 4 of this Law.

In the event that neither party to the contract on exchange filed a claim for repossession before the expiry of the deadline set out in Article 16, the competent authority in each municipality shall revalidate the contracts on use pursuant to Article 27 paragraph 2, point 4 of this Law.

In the event that only one party to the contract on exchange filed a claim for repossession before the expiry of the deadline set out in Article 16, the competent authority shall inform in writing the corresponding competent authority in the municipality where the exchanged apartment is located of the claim. The receiving competent authority shall then deem a claim to have been filed, before the expiry of the deadline set out in Article 16, for the exchanged apartment within its jurisdiction and process the claim according to the law.

In case of a dispute as to the validity of the contract on exchange, the competent authority shall suspend proceedings and shall refer the parties to the competent court according to the provision of the Law on General Administrative Procedures (SFRY OG no. 47/86; taken over by Article 12 of the Constitutional Law on Implementation of the Constitution of the Republika Srpska, OG RS no. 21/92) regulating preliminary issues, in order to rule on the allegation. Notwithstanding the provisions of the Law on Civil Procedures (SFRY OG no. 4/77; taken over

by Article 12 of the Constitutional Law on Implementation of the Constitution of the Republika Srpska, OG RS no. 21/92), the burden of proof shall lie upon the party claiming to have acquired rights to the apartment through the contract on exchange to establish that the transaction was conducted voluntarily and in accordance with the law. Where one of the exchanged apartments is located in the territory of another republic of the former SFRY, the burden of proof shall lie upon the party claiming that the contract on exchange was not conducted voluntarily and in accordance with the law to demonstrate that the status of the parties prior to the exchange shall be restored."

47. Article 25 provides as follows:

"The provisions of this Law shall also apply to the abandoned real property, the ownership of which has been acquired after 30 April 1991 under any title on sale of real property (contracts on exchange, purchase, gift, *etc.*,).

In case of a dispute as to the lawfulness of the transferred real property right, the competent authority shall refer the matter to the competent court according to the provision of the Law on General Administrative Procedures regulating preliminary issues, in order to rule on the allegation."

V. COMPLAINTS

48. In his application, the applicant alleges a violation of his right to property as protected under Article 1 of Protocol No. 1 to the Convention, in that the courts of the Republika Srpska have given M.V. ownership of the house located on plot no. 1619. The applicant claims that all the decisions of the Republika Srpska judiciary in his case are devoid of legal basis and motivated only by the ethnic origin of the parties.

49. During the public hearing on 9 October 2002, the applicant argued that his rights guaranteed under Article 6 of the Convention had been violated because Judge Gorjana Popadić, who issued the decision of the First Instance Court in Banja Luka on 4 June 1996 in the case in which M.V. was the plaintiff and the applicant was the defendant (see paragraph 24 above), was also the president of the panel of judges of the Second Instance Court in Banja Luka that decided on the renewal of proceedings in the same case on 23 August 2001.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

50. In its submission of 27 February 2002, the respondent Party argues that the application should be struck out in accordance with Article VIII(3)(b) of the Agreement because "the matter has been resolved". It points out that the dispute over the contract on exchange of real property between the applicant and M.V. of 12 October 1992 has been validly and finally determined by the judicial organs of the Republika Srpska. The respondent Party reiterates the facts of the case, highlighting the decision of the Court of First Instance in Banja Luka of 4 June 1996, by which the Court found the contract on exchange to be valid. This judgment was confirmed by the Second Instance Court in Banja Luka on 23 April 1997. On 19 August 1998, the Supreme Court of the Republika Srpska rejected the review requested by the applicant. Therefore, the respondent Party opines that this case was definitively solved by the competent organs of the Republika Srpska in 1998. Since the applicant filed his application with the Chamber on 24 September 2001, the respondent Party further contends that the application should be declared inadmissible for non-compliance with the six-month rule under Article VIII(2)(a) of the Agreement.

51. As to the merits, the respondent Party argues that the application is ill-founded. There cannot be any violation of Article 1 of Protocol No. 1 to the Convention since the courts of the Republika Srpska have already decided on the validity of the contract on exchange. In first instance,

second instance, and review proceedings, the competent courts all decided in the same manner. Therefore, the respondent Party suggests that the Chamber declare this application inadmissible as manifestly ill-founded under Article VIII(2)(c) of the Agreement.

B. The applicant

52. The applicant submits that in the court case concerning scope of the contract, pending before the Republika Srpska judiciary between 1992 and 1998, the courts have disregarded the clear text of the contract on exchange and recognised M.V.'s claim to ownership of the house located on plot no. 1619 without any legal basis. The applicant claims that the decisions of the Republika Srpska judiciary in his case are solely motivated by the ethnic origin of the parties.

53. As to the court case initiated by M.V. in December 2001, the applicant alleges that the First Instance Court is deliberately delaying any progress in the case. In the meantime, he is under threat of eviction from the property he currently occupies in Croatia, while M.V. collects rent from the tenants of the house on plot no. 1619.

54. Finally, the applicant alleges that the CRPC decision in his favour should be implemented in accordance with the Law on Implementation of CRPC Decisions.

C. The *amici curiae*

55. The OSCE and the OHR, as *amici curiae*, argue that the Law on Implementation of CRPC Decisions should apply as *lex specialis* in the present case. They stated at the public hearing that the Law on Implementation of CRPC Decisions, which was originally passed in 1999, provides for a parallel procedure for claims filed with the administrative bodies. As a consequence, the rights of the parties will depend on whether they filed their claim to the CRPC or to the administrative body. In practice it often occurs that people who filed claims to the CRPC and received CRPC decisions (specially, for example, in situations concerning the exchange of properties), are in a better position than people who filed similar claims to the administrative bodies.

56. However, the *amici curiae* point out that one of the goals of the amendments of 4 December 2001 to the Law on Cessation of the Application of the Law on the Use of Abandoned Property and to the Law on Implementation of CRPC Decisions of the Republika Srpska (and to corresponding laws in the Federation of Bosnia and Herzegovina not relevant to the present application) was to harmonise the provisions on suspension of proceedings and on the burden of proof in each law along the lines set out in Article 2a of the Law on Cessation of the Application of the Law on the Use of Abandoned Property of the Republika Srpska. They submit that any current ambiguity as regards this policy in the relevant legislation is likely the result of legislative oversight, and the inconsistencies should be rectified and remedied, perhaps through new legislative amendments. Thus, with regard to the suspension of enforcement proceedings, the model set out in Article 2a of the Law on Cessation of the Application of the Law on the Use of Abandoned Property of the Republika Srpska should be applicable. Accordingly, where there is a dispute as to the validity of a contract on exchange, the housing authority must suspend its proceedings and refer the case to the competent court to determine whether the contract was signed voluntarily and in accordance with the law or under duress.

57. The *amici curiae* further argue that because of the likelihood that one of the exchanged properties cannot be restored to the pre-war right-holder due to legal barriers to repossess the property or to a subsequent transfer of the property, inter-republic exchange cases (like the present application) present the most compelling situation where the failure of the administrative body to suspend its enforcement proceedings could cause irreparable harm. They underline that suspension of the proceedings in this category of cases is indispensable (although they recommend suspension of the proceedings in all cases concerning contracts on exchange, regardless of whether the exchange was inter-republic, inter-Entity, intra-Entity, intra-municipality or any other variation). They reason that, given the assumptions built into the law, failing to suspend the proceedings will almost certainly lead to wrongful evictions.

58. Moreover, the *amici curiae* note that the allocation of the burden of proof in such cases reflects the legislator's assumption that most contracts on exchange concluded during the state of war were invalid. On the other hand, the decision to require a case-by-case analysis by the courts of all war-time contracts on exchange, rather than to annul all such contracts *ex lege*, indicates the legislator's assumption that some war-time contracts on exchange were valid. In these cases, the administrative body's failure to suspend its enforcement proceedings would cause an effectively wrongful eviction that would not be remedied until the court issues a decision upholding the contract on exchange. Cancellation of all contracts *ex lege*, and the consequent possibility of the parties to revalidate only those contracts on exchanges where an agreement of wills exists, would cause legal insecurity since such property in numerous instances was already disposed of.

VII. OPINION OF THE CHAMBER

59. The applicant complains of violations of his right to peaceful enjoyment of possessions and of his right to a fair hearing, as well as of discrimination in the enjoyment of these rights.

60. The Chamber must first decide whether to accept an application, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the [Chamber] within six months from such date on which the final decision was taken. … (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

A. Complaints inadmissible under the six-month rule in Article VIII(2)(a)

61. The applicant's primary complaint is that in the court case brought by M.V. in 1992 concerning the scope of the exchange, the courts of the Republika Srpska have given M.V. ownership of the house located on plot no. 1619. The applicant claims that all the decisions of the Republika Srpska judiciary in his case are devoid of legal basis and motivated only by the ethnic origin of the parties. On these grounds he alleges violations of his right to peaceful enjoyment of possessions and of his right to a fair hearing, as well as of discrimination in the enjoyment of these rights.

62. The Chamber notes that the ordinary proceedings in this case were concluded by the judgement of the District Court in Banja Luka of 23 April 1997, which confirmed the first instance judgement of 4 June 1996. The applicant then filed a request for review against the second instance judgment of 23 April 1997, which was refused by the Supreme Court of the Republika Srpska on 19 August 1998. Whether the Chamber considers the judgement of 23 April 1997 or the judgement of 19 August 1998 as the "final decision" in the applicant's case for the purposes of Article VIII(2)(a) of the Agreement, the date on which the applicant filed his application to the Chamber, 24 September 2001, is more than three years later. Accordingly, insofar as the applicant alleges that those proceedings were unfair, and that the courts deprived him of his property of plot no. 1619 in a discriminatory manner, the application is inadmissible under the six-month rule in Article VIII(2)(a). The Chamber will therefore declare the application inadmissible in this respect.

63. Moreover, during the public hearing on 9 October 2002, the applicant argued that his rights guaranteed under Article 6 of the Convention had been violated because Judge Gorjana Popadić, who issued the judgement of the First Instance Court in Banja Luka on 4 June 1996, was also the president of the panel of judges of the Second Instance Court in Banja Luka that decided on the renewal of proceedings in the same case on 23 August 2001. However, the Chamber notes that these allegations were not contained in the application that was lodged on 24 September 2001, nor in the applicant's subsequent written submissions. Rather, the applicant raised these allegations for the first time during the public hearing on 9 October 2002. The Chamber notes that, for the purposes of Article VIII(2)(a) of the Agreement, the date of the disputed final decision by the Second Instance Court in Banja Luka of 23 August 2001 is more than six months before 9 October 2002, the date when the applicant first raised these complaints. Accordingly, also in this respect the

application does not comply with the requirements of Article VIII(2)(a) of the Agreement and the Chamber will declare it inadmissible.

B. Complaints inadmissible as manifestly ill-founded

64. The remaining complaints of the applicant are that his right to property is violated by the suspension of enforcement of the CRPC decision concerning plot no. 1619, and that the court proceedings on the validity of the contract are being purposefully delayed. This in turn means that the enforcement of the CRPC decision is further delayed, as both the Republika Srpska administration and the Chamber have decided that enforcement should be suspended pending those court proceedings.

65. The Chamber notes that the applicant holds a CRPC decision confirming that, as of 1 April 1992, he was the *bona fide* possessor of plot no. 1619. Annex 7 of the Dayton Peace Agreement and the Law on Implementation of CRPC Decisions state that this decision is final. Moreover, the Law on Implementation of CRPC Decisions places an obligation on the administrative authorities of the respondent Party to enforce the CRPC decision by reinstating the applicant into possession of the property designated in the CRPC decision. It is undisputed that the respondent Party has failed to do so, although the applicant has filed a request of enforcement to the competent authority on 11 September 2000.

66. On the other hand, the Law on Implementation of CRPC Decisions recognises that the property may have been lawfully transferred since the date referred to in the CRPC decision. For such cases, the Law provides in its new Article 12a that the person seeking to bring enforcement of the CRPC decision to a halt may initiate proceedings before the competent court in order to have the lawfulness and the voluntary character of the transfer established. The second paragraph of Article 12a further provides that the court may "make a specific order to suspend the enforcement proceedings before the responsible administrative body pending the court's decision". M.V. has made use of these remedies, but the First Instance Court in Banja Luka has failed to rule on his request for an *interim* order. In its decision on admissibility and merits in the case brought by M.V., the Chamber has found this failure of the Court to contribute to the violation of M.V.'s right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention (*Vučkovac*, paragraphs 81-82). The Chamber has therefore ordered the Republika Srpska "to take all necessary steps to immediately suspend the enforcement proceedings against [M.V.] until the civil dispute initiated by the applicant on 29 December 2000 is decided by a final and binding (pravosnažno) decision" (*Vučkovac*, paragraph 88).

67. At the same time, the Chamber observes that the courts of the Republika Srpska have already ruled on the exchange contract between the applicant and M.V.. In this court case the fact that the two parties entered voluntarily into an exchange contract appears not to have been in dispute. Rather, the litigation concerned the scope of that contract. On 4 June 1996, the First Instance Court in Banja Luka issued a decision in M.V's favour confirming that the contract on exchange concluded between the applicant and M.V. covered the disputed property in Banja Luka at Marka Lipovca Street no. 14 A. This decision was confirmed on 23 April 1997 and again on 19 August 1998 by the District Court in Banja Luka and the Supreme Court of the Republika Srpska respectively, when they refused the appeals of the applicant.

68. Thus, a first set of court proceedings concerning the scope of the exchange contract took place between 4 June 1996 and 19 August 1998. It resulted in a valid judgment resolving the civil dispute over the scope of the contract. The Chamber notes that this first set of proceedings was conducted before the entry into force of the Law on Implementation of CRPC Decisions, which was imposed on 27 October 1999 (Official Gazette of RS no. 31/99). Article 13 of the Law on Implementation of CRPC Decisions provides: "If the validity of the transfer has been determined in previous proceedings which took place prior to the entry into force of this Law, the decision taken in the previous proceedings shall be null and void".

69. In the Chamber's opinion it is open to dispute whether the provision on ex lege nullification of the previous proceedings as contained in Article 13 of the Law on Implementation of CRPC Decisions

applies in the present case to the first set of proceedings. As the Chamber has already pointed out in the *Vučkovac* decision:

> "[M.V.]'s request for provisional measures should have prompted the First Instance Court in Banja Luka to decide whether the question of the existence of a valid transfer of the rights over plot 1619 was at all pending before it, or whether this question was not *res judicata*, having been decided in a final and binding way (pravosnažno) by the judgment of 4 June 1996. For this purpose, the First Instance Court would have had to examine whether Article 13, paragraph 3 of the Law on Implementation of CRPC Decisions (reading "If the validity of the transfer has been determined in previous proceedings which took place prior to the entry into force of this Law, the decision taken in the previous proceedings shall be null and void") applied to vacate the judgment of 4 June 1996." (*Vučkovac,* paragraph 77).

70. Taking into account all the above considerations in relation to the enforcement of the CRPC decision in the applicant's favour, the Chamber finds that the failure to enforce this decision while the court dispute concerning the validity of the exchange contract is pending does not reveal any appearance of a violation of the applicant's right to peaceful enjoyment of possessions.

71. Finally, the applicant complains that the case initiated by M.V. before the First Instance Court in Banja Luka in December 2000, in which the applicant is defendant and counter-plaintiff, is not making any progress, thus delaying the date in which a decision of the judiciary will be forthcoming which will unblock the enforcement of the CRPC decision. The Chamber notes, however, that the applicant has neither asserted nor demonstrated that he has taken steps to request the Court to expeditiously conclude the case. In particular, the applicant has not submitted to the Chamber that he requested the Court to rule that enforcement of the CRPC decision should not be suspended pending resolution of the court case, nor that he has asked the Court to rule that the judgement of 4 June 1996 has been vacated *ex lege* by Article 13(3) of the Law on Implementation of CRPC Decisions. Under these circumstances, the Chamber cannot find that his complaint that a court case initiated in December 2000 is still pending in first instance reveals any violation of the right to a fair hearing within a reasonable time.

72. In conclusion, the Chamber finds that with regard to the alleged violation of the applicant's rights by the failure to enforce the CRPC decision and the duration of the judicial proceedings initiated on 29 December 2000, the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

VIII. CONCLUSION

73. For the above reasons, the Chamber decides:

1. unanimously, that the application is inadmissible with respect to the complaint under Article 1 of Protocol No. 1 to the Convention;

2. unanimously, that the application is inadmissible with respect to the complaint under Article 6 of the Convention; and

3. unanimously, that the application is inadmissible with respect to the complaint of discrimination in the enjoyment of the rights protected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel