DECISION ON FURTHER REMEDIES

(Delivered on 4 July 2003)

Cases no. CH/97/48, CH/97/52, CH/97/104, CH/97/105, CH/97/106, CH/97/107, CH/97/108, CH/98/374, CH/98/386, CH/99/2997, and CH/00/4358

Milovan POROPAT, Senija POROPAT, Brankica TODOROVIĆ, Muradifa ŠEREMET, Smaila HODŽIĆ, Azra HADŽIĆ, Muhamed HRELJA, Remsa MULALIĆ-PAPO, Žanka ILIĆ, Milenko VIŠNJEVAC, and Mihailo JANKOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 30 June 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia De Meo, Deputy Registrar

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

Adopts the following decision pursuant to Article XI of the Agreement and Rules 58 and 59 of its Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina who had deposited foreign currency with commercial banks in the former Socialist Federal Republic of Yugoslavia (hereinafter "SFRY"). Because of a growing shortage of foreign currency and other economic problems, withdrawal of money from these old foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s. Following the armed conflict in Bosnia and Herzegovina, the applicants' requests to withdraw money from their foreign currency savings accounts were all rejected, either without stated reasons or with reference to legislation enacted by the SFRY, the Republic of Bosnia and Herzegovina, or the Federation of Bosnia and Herzegovina.

2. According to legislation enacted by the Federation of Bosnia and Herzegovina in 1997 and 1998, in particular the Law on Determination and Settlement of Citizen's Claims in the Privatisation Process (hereinafter "the Citizens' Claims Law"), claims based on the old foreign currency savings accounts were to be resolved in the process of privatisation of socially and publicly owned property. Under the Citizens' Claims Law, the balances of foreign currency savings were to be recorded in a "Unique Citizen's Account" maintained by the Federal Payment Bureau. Instead of paying out the savings, the Bureau issued certificates in a commensurate amount. According to the relevant legal provisions, these certificates could be used in the privatisation process to purchase apartments, municipal business premises, shares of enterprises, or other assets. This procedure was designed to settle Citizen's Claims in a way that would protect the public debt payment system and the banking system from collapse.

3. On 9 June 2000, the Chamber delivered its Decision on Admissibility and Merits in CH/97/48 *et al.*, *Poropat and Others against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, involving four of the present applicants (case no. CH/97/48 *et al.*, *Poropat and Others*, decision on admissibility and merits delivered 9 June 2000, Decisions January-June 2000) (hereinafter "*Poropat and Others*"). The Chamber decided that, with regard to frozen foreign currency savings accounts, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina had violated the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights (hereinafter "the Convention"). The Chamber ordered, *inter alia*, that the Federation of Bosnia and Herzegovina should "amend the privatisation programme so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency savings accounts."

4. Between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to comply with the Chamber's order in *Poropat and Others*.

5. During that period, on 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law — provisions essential to the scheme of conversion of old foreign currency savings into certificates — were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina. This decision was published in the Official Gazette of the Federation on 9 March 2001.

6. On 11 October 2002, the Chamber delivered its Decision on Admissibility and Merits in CH/97/104 *et al.*, *Todorović and Others against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, involving seven of the present applicants (case no. CH/97/104 *et al.*, *Todorović and Others*, decision on admissibility and merits delivered 11 October 2002, Decisions July-December 2002) (hereinafter "*Todorović and Others*"). In *Todorović and Others*, the Chamber decided, *inter alia*, that the state of legal uncertainty resulting from the Federation Constitutional Court's decision, the Federation's continued application of laws that had been declared unconstitutional, the lack of responsive amendments to those laws, and the unavailability of relief in the domestic courts, taken together, created a disproportionate interference with the applicants' property rights and therefore constituted a violation by the Federation of Bosnia and Herzegovina of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention. The Chamber also found a violation of Article 1 of Protocol No. 1 to the Convention

by Bosnia and Herzegovina, based on the State's general involvement in and responsibility for old foreign currency savings accounts and its failure to take adequate action in this respect.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The proceedings before the Chamber prior to October 2002 are set out in detail in *Poropat and Others* (paragraphs 7-20) and *Todorović and Others* (paragraphs 10-20).

8. Under the Chamber's decision in *Poropat and Others*, the respondent Parties were obliged to report to the Chamber by 9 December 2000 on the steps taken to comply with the Chamber's orders. The Chamber received reports from the Federation of Bosnia and Herzegovina on 8 December 2000 and 27 April 2001. Bosnia and Herzegovina did not submit any such report.

9. Under the Chamber's decision in *Todorović and Others*, the respondent Parties were obliged to report to the Chamber by 11 April 2003 on the steps taken to comply with the Chamber's orders. The Chamber received a report from the Federation of Bosnia and Herzegovina on 15 April 2003 and a supplemental report on 24 April 2003. Bosnia and Herzegovina did not submit any such report.

10. On 18 April 2003, the Chamber received a submission from the applicant Milenko Višnjevac (case no. CH/99/2997), through his attorney, Mr. Halil Mušinović of Vogošća. Mr. Višnjevac complains that no action has been taken in his case pursuant to the Chamber's decision in *Todorović and Others*. He requests the Chamber to adopt a supplemental decision in that case or to open renewed proceedings on his behalf. He alleges numerous instances of physical and mental suffering resulting from his inability to retrieve money from his old foreign currency savings account, and he asks the Chamber to order monetary relief for these injuries. This submission was transmitted to the respondent Parties on 20 May 2003.

III. FACTS

11. All of the present applicants have attempted, at one time or another, to retrieve money from their old foreign currency savings accounts, either through requests to the banks, court action, or both. None of these attempts has been successful. One applicant, Mr. Višnjevac (case no. CH/99/2997), obtained a court judgement in his favour but was subsequently informed by the Minister of Finance of the Federation of Bosnia and Herzegovina that the judgement could not be enforced.

A. The facts of the individual cases

12. Detailed accounts of the facts of the individual cases are set out in *Poropat and Others* (paragraphs 21-36) and *Todorović and Others* (paragraphs 21-53). The Chamber bases the present decision on the individual facts found in those decisions. In so doing, the Chamber is not making a formal finding of the current value of the applicants' old foreign currency savings accounts.

1. Case no. CH/97/48, Milovan Poropat

13. According to the Chamber's decision in *Poropat and Others*, Mr. Poropat has a foreign currency savings book issued by the former Privredna Banka Sarajevo. His savings book records indicate savings of USD 47.55, CHF 171.00, DEM 1,880.18, and FRF 2,401.72 as of 31 March 1992. After that date, Mr. Poropat withdrew FRF 68.91 and USD 35.86 (*Poropat and Others*, paragraph 21).

2. Case no. CH/97/52, Senija Poropat

14. According to the Chamber's decision in *Poropat and Others*, Ms. Poropat has a foreign currency savings book issued by Jugobanka Sarajevo. Her savings book records indicate savings of USD 558.31 and DEM 520.22 as of 30 January 1992 (*Poropat and Others*, paragraph 25).

3. Case no. CH/97/104, Brankica Todorović

15. According to the Chamber's decision in *Todorović and Others*, Ms. Todorović has a foreign currency savings book issued by Jugobanka Sarajevo. The amounts concerned are DEM 2,940.00 and FRF 10,709.00 (*Todorović and Others*, paragraph 21).

4. Case no. CH/97/105, Muradifa Šeremet

16. According to the Chamber's decision in *Poropat and Others*, Ms. Šeremet has a foreign currency savings book issued by Privredna Banka Sarajevo. Her savings were recorded in the amounts of DEM 12,697.00 and ATS 2,629.46 as of 17 February 1992 (*Poropat and Others*, paragraph 29).

5. Case no. CH/97/106, Smaila Hodžić

17. According to the Chamber's decision in *Todorović and Others*, Ms. Hodžić has a foreign currency savings book issued by Ljubljanska Banka d.d. Sarajevo (*Todorović and Others*, paragraph 24).

18. By its letter dated 29 March 2002, Ljubljanska Banka d.d. Sarajevo confirmed that, on 28 April 1998, it transferred a total amount of DEM 5,562.91 to the Unique Citizen's Account on behalf of Ms. Hodžić in the form of a certificate (*Todorović and Others*, paragraph 28).

6. Case no. CH/97/107, Azra Hadžić

19. According to the Chamber's decision in *Todorović and Others*, Ms. Hadžić's application concerns a frozen bank account at Ljubljanska Banka d.d. Sarajevo. The amounts involved are ATS 2,999.99 and USD 3,011.74 (*see Todorović and Others*, paragraph 29).

7. Case no. CH/97/108, Muhamed Hrelja

20. According to the Chamber's decision in *Poropat and Others*, Mr. Hrelja has foreign currency savings books issued by Jugobanka Sarajevo and Privredna Banka Sarajevo. The amounts of his savings are listed as USD 692.32, CHF 786.11, DEM 9,474.12, DKK 94.56, and SEK 322.95 (*Poropat and Others*, paragraph 33).

8. Case no. CH/98/374, Remsa Mulalić-Papo

21. According to the Chamber's decision in *Todorović and Others*, Ms. Mulalić-Papo has one foreign currency account in the former Jugobanka Sarajevo, now Unionbanka Sarajevo. As of 9 February 1998, her savings in that account were recorded in the amount of DEM 11,640.94. The applicant also has two foreign currency accounts in the Ljubljanska Banka d.d. Sarajevo. As of 6 March 1996, her savings in the first account were recorded in the amount of DEM 31,671.39. On the same date, her savings in the second account were recorded in the amount of DEM 1,501.30 (*Todorović and Others*, paragraphs 32-33).

9. Case no. CH/98/386, Žanka Ilić

22. According to the Chamber's decision in *Todorović and Others*, Dr. Ilić has two foreign currency savings books issued by the former Jugobanka Sarajevo, now Unionbanka Sarajevo. On 11 January 1994, her savings in the first account were recorded in the following amounts: ATS 381.71, CHF 6,783.95, USD 4,123.30, and DEM 104,088.76. Her savings in the second account were recorded in the amounts of DEM 67,984.01 and USD 2,032.89. The date of this record on the second account is not legible in the records provided to the Chamber (*Todorović and Others*, paragraph 38).

10. Case no. CH/99/2997, Milenko Višnjevac

23. According to the Chamber's decision in *Todorović and Others*, Mr. Višnjevac's application concerns a frozen bank account at Ljubljanska Banka d.d. Sarajevo. As of 3 February 1992, the amounts involved were approximately ASD 3,192.78, USD 370.74, DEM 103.99 (*Todorović and Others*, paragraph 42).

24. Mr. Višnjevac attempted to withdraw his deposits of old foreign currency savings in order to travel abroad for medical treatment, but the bank denied his withdrawal request.

25. Mr. Višnjevac then sought relief in the domestic courts and obtained a judgement ordering Ljubljanska Banka d.d. Sarajevo to pay out the old foreign currency savings to the account holder. On 22 November 1993, the First Instance Court of Sarajevo ("Osnovni Sud") ruled that Ljubljanska Banka d.d. Sarajevo was obligated to pay Mr. Višnjevac 2,000 DEM, converted from funds in his old foreign currency savings account. After appeals were exhausted, Mr. Višnjevac requested enforcement of the judgement from the First Instance Court of Sarajevo. On 27 April 1999, that court issued a procedural decision permitting enforcement of the judgement. Ljubljanska Banka d.d. Sarajevo appealed, but its appeal was refused by the First Instance Court of Sarajevo on 14 November 2000 and another appeal refused by the Cantonal Court in Sarajevo, which confirmed the First Instance Court's decision, on 20 December 2000. Mr. Višnjevac was still unable to obtain payment from the bank, however.

26. In a letter dated 22 March 2001, the Federation Minister of Finance informed Mr. Višnjevac that the court judgement he obtained against Ljubljanska Banka d.d. Sarajevo was not enforceable. Specifically, the letter states that

> "it is not possible to execute valid court judgements against Ljubljanska Banka d.d. Sarajevo or any other bank in the Federation of BiH. Also, there is no organ or authority that could order payment on that basis."

27. On 24 May 2002, Mr. Višnjevac renewed his request for enforcement before the Municipal Court in Sarajevo. Specifically, he asked for execution of payment of cash in the amount of EUR 1,022.58 and that the Ljubljanska Banka d.d. Sarajevo be required to submit a record of his account to the court. (The bank had previously refused to provide such a record to Mr. Višnjevac.) Also on 24 May 2002, Mr. Višnjevac informed the Municipal Court in Sarajevo that he was appealing the non-enforcement of his judgement to the Constitutional Court of Bosnia and Herzegovina pursuant to Article VI.3(b) of the Constitution of Bosnia and Herzegovina.

28. By his submission dated 18 April 2003, Mr. Višnjevac states that no action has been taken in his case to effectively carry out the Chamber's order in *Todorović and Others* and that he continues to suffer physical and mental damages from his inability to retrieve money from his old foreign currency savings account.

11. Case no. CH/00/4358, Mihailo Janković

29. According to the Chamber's decision in *Todorović and Others*, Mr. Janković has a foreign currency savings book issued by the former Jugobanka Sarajevo, now Unionbanka Sarajevo. His savings as of 10 February 1998 were recorded in the amount of DEM 13,147.37, as stated in the bank book and certified by the bank (*Todorović and Others*, paragraph 47).

IV. RELEVANT LEGAL PROVISIONS

30. The statutes and other legal authorities relevant to these cases are set out in *Poropat and Others* (paragraphs 83-105) and *Todorović and Others* (paragraphs 54-73).

V. COMPLAINTS

31. The applicants complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, and their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention, have been violated.

VI. SUBMISSIONS OF THE PARTIES

32. The submissions of the parties prior to 11 October 2002 are summarised in *Poropat and Others* (paragraphs 7-20 and 107-125) and *Todorović and Others* (paragraphs 10-20 and 75-92).

A. Bosnia and Herzegovina

33. As noted above, Bosnia and Herzegovina has not submitted any reports regarding attempts by the State to comply with the Chamber's orders in these cases.

B. The Federation of Bosnia and Herzegovina

34. Since the Chamber's decision in *Todorović and Others*, the Federation of Bosnia and Herzegovina has submitted compliance reports to the Chamber on 11 April 2003 and 24 April 2003. With regard to the Chamber's order that the Federation of Bosnia and Herzegovina enact laws to clearly address the old foreign currency savings problem, the Federation's agent reported that her office addressed the government of the Federation of Bosnia and Herzegovina and the Federal Ministry of Finance. The Federation further reported that, after the Constitutional Court's decision in 2001, the Federal Ministry of Finance initiated proceedings to amend the laws, and that these amendments would provide for the return of frozen foreign currency savings to account holders' savings books. According to the Federation, this draft law was adopted by the House of People of the Federation Parliament on 23 July 2002 (before the *Todorović and Others* decision), but has not yet been considered by the House of Representatives due to the changes in government following the elections.

35. The Federation further reported that a State-level commission for frozen foreign currency savings was appointed on 16 April 2003 during the session of the Council of Ministers. The reported task of this commission is to address the governments of the Republic of Slovenia and Serbia and Montenegro to resolve issues related to frozen foreign currency savings at Ljubljanska Banka d.d. Ljubljana and Investbanka d.d. Belgrade.

36. The Federation further stated that it advocates taking over the outstanding frozen foreign currency savings obligations from domestic banks as public debt to be paid over the next ten to fifteen years with minimum interest. The Federation reported that a draft law would be prepared based on the experience of other former SFRY countries, and that Bosnia and Herzegovina and the entities were obligated to adopt an internal debt strategy by June 2003.

37. With regard to the Chamber's order that the Federation take all necessary steps to ensure enforcement of a court judgement obtained by the applicant Milenko Višnjevac (case no. CH/99/2997), the Federation reported that, on 14 November 2002, the Municipal Court I in Sarajevo requested Ljubljanska Banka d.d. Sarajevo to submit the account number within eight days. By its letter of 20 November 2002, the bank informed the court that it could not comply with its decision because the State of Bosnia and Herzegovina had taken over the obligations related to old foreign currency savings.

C. The Applicants

38. By his submission dated 18 April 2003, the applicant Milenko Višnjevac (case no. CH/99/2997) states that no action has been taken in his case to effectively carry out the Chamber's order in *Todorović and Others* and that he continues to suffer physical and mental damages from his inability to retrieve money from his old foreign currency savings account.

VII. REMEDIES

A. As to the remedies ordered with regard to Article 1 of Protocol No. 1 to the Convention

39. Based on the Federation of Bosnia and Herzegovina's April 2003 reports to the Chamber (*see* paragraphs 34-36 above), the Chamber can only conclude that the Federation has not taken any relevant steps to comply with the *Todorović and Others* decision. Instead, it appears that the Federation has continually delayed taking any substantive legislative action to remedy the violations, blaming its inactivity on changes in government brought about by the 2002 elections. In the absence of any concrete action on its part, the Federation's compliance reports cite only to speculative future actions by the legislature and a commission formed to resolve issues related to certain foreign banks. Further, the Federation has not ensured the enforcement of the applicant Milenko Višnjevac's valid court judgement, as ordered, but has merely acquiesced in the bank's refusal to pay. In short, the Federation has failed to implement the Chamber's orders in *Todorović and Others* in any meaningful respect.

40. At the same time, Bosnia and Herzegovina has provided no report regarding attempted compliance with the Chamber's decision in *Todorović and Others*, and the Chamber can only conclude that the State has taken no action. Therefore, the Chamber finds that Bosnia and Herzegovina has also failed to comply with the Chamber's decision.

41. Meanwhile, the human rights violations found in *Poropat and Others* and *Todorović and Others* continue. Since the Constitutional Court of the Federation has declared that Articles 3, 7, 11, and 18 of the Citizens' Claims Law — provisions essential to the scheme of conversion of old foreign currency savings into certificates — are not in accordance with the Constitution of the Federation of Bosnia and Herzegovina, there is no legal basis for denying these applicants access to their old foreign currency savings accounts. Nonetheless, the Federation persists in doing so. Bosnia and Herzegovina's failure to address the problem in any significant respect has also allowed these ongoing violations to persist.

42. In the particular case of the applicant Milenko Višnjevac (case no. CH/99/2997), the Federation's failure to ensure enforcement of his valid court judgement has further prolonged the specific violation of Article 1 of Protocol No. 1 to the Convention in that case.

43. In sum, both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina continue to violate Article 1 of Protocol No. 1 to the Convention with regard to the current applicants and the old foreign currency savings account situation in general, and they thereby continue to be in breach of Article I of the Human Rights Agreement.

44. Having regard to the above, the Chamber finds it appropriate to order further remedies in each of these cases.

45. Under Article XI(1)(b) of the Agreement, the Chamber shall address the question of what steps are to be taken by the respondent Party to remedy the breaches of its obligations under the Agreement. In this respect, the Chamber may consider issuing orders to cease and desist, awarding monetary relief (for pecuniary and non-pecuniary injuries), and prescribing provisional measures.

46. The Chamber notes that the remedies ordered in *Poropat and Others* and *Todorović and Others* remain in force. In order to establish what further remedies are appropriate, the Chamber finds it necessary to state once more the remedies it has ordered in *Poropat and Others* and *Todorović and Others*, and the reasons for ordering such remedies.

47. In each of these cases, the applicant claims compensation for the full amount of his or her old foreign currency savings. Some of the applicants specifically request awards of interest and reimbursement for costs of proceedings in addition to payment of their old foreign currency savings. The applicant Milenko Višnjevac (case no. CH/99/2997) additionally requests damages for alleged physical and mental suffering from his inability to retrieve money from his old foreign currency savings account.

1. Further remedies regarding the failure to enforce the valid court judgement in the case of Milenko Višnjevac (CH/99/2997)

48. The Chamber recalls that Mr. Višnjevac holds a valid judgement of the First Instance Court of Sarajevo ("Osnovni Sud"), finding that Ljubljanska Banka is obligated to pay him 2,000 DEM, converted from funds in his old foreign currency savings account. Mr. Višnjevac requested enforcement of the judgement from the First Instance Court of Sarajevo. On 27 April 1999, that court issued a procedural decision permitting enforcement of the judgement. Ljubljanska Banka appealed, but its appeal was refused by the First Instance Court of Sarajevo on 14 November 2000 and another appeal refused by the Cantonal Court in Sarajevo, which confirmed the First Instance Court's decision, on 20 December 2000.

49. In the *Todorović & Others* judgement, the Chamber ordered the Federation of BiH "to take all necessary steps to ensure the enforcement of Mr. Višnjevac's judgement as ordered by the First Instance Court in Sarajevo on 22 November 1993, not later than 11 January 2003" (paragraph 175(13)). The Federation has reported that, on 14 November 2002, the Municipal Court I in Sarajevo requested Ljubljanska Banka d.d. Sarajevo to submit the account number within eight days. By its letter of 20 November 2002, the bank informed the court that it could not comply with its decision because the State of Bosnia and Herzegovina had taken over the obligations related to old foreign currency savings. The Federation has taken no further steps to implement the judgement against Ljubljanska Banka in favour of Mr. Višnjevac.

50. The Chamber recalls that there is no legal basis on which Ljubljanska Banka d.d. Sarajevo can refuse the payment of a valid court judgement to Mr. Višnjevac. If Ljubljanska Banka d.d. Sarajevo, a bank registered to do business in the Federation, does not comply with the valid and enforceable judgement of a Federation court, the Federation is responsible, upon request of the beneficiary of the judgement, to take all necessary coercive steps to ensure the enforcement of the judgement issued by its own courts. However, in the case of Mr. Višnjevac, the Federation is unwilling to ensure enforcement of the judgement of the First Instance Court in Sarajevo against Ljubjanska Banka d.d. Sarajevo. The Chamber therefore finds it appropriate to order the Federation itself to pay the amount corresponding to the DEM 2,000 that its authorities should have forced Ljubjanska Banka d.d. Sarajevo to pay to the applicant, along with any and all interest accrued on this amount under the First Instance Court's judgement.

2. Further remedies in all cases, except for the failure to enforce the valid court judgement in the case of Milenko Višnjevac (CH/99/2997)

51. The Chamber notes, by way of introduction, that it has recognised in both the *Poropat & Others* (paragraph 180) and *Todorović & Others* (paragraph 135) that the legislative measures taken by the Federation were pursued in the general interest. The Chamber has accepted the assertion of the Federation that it is in the general interest to attempt to administer citizens' claims against banks in a manner designed to protect the banking system from collapse. The Chamber has also accepted the assertions of the respondent Parties that they would like to solve the problem of old foreign currency savings through public debt, but that this is not possible under the current economic and financial circumstances (*see, e.g.*, *Poropat & Others*, paragraph 180).

(a) Responsibility of Bosnia and Herzegovina

52. With regard to Bosnia and Herzegovina, the Chamber recalls its findings in *Poropat & Others*, adopted in June 2000:

> "166. In determining to what extent Bosnia and Herzegovina was under [an obligation to take action with regard to the applicants' old foreign currency savings], the Chamber considers that not only the implicit recognition of its responsibility of the old foreign currency savings is of importance. Regard must also be had to the factual situation of these savings following the entry into force of the Agreement and the issuance of the 1995 and 1996 Decisions. For several years, there had been considerable difficulties in having money withdrawn from the accounts in question. Furthermore, Article 150 of the 1992 Decree had stipulated that the SFRY Law on Foreign Exchange Transactions, which had regulated the operation of

> the old foreign currency savings accounts and the purposes for which these savings could legally be used, ceased to apply. However, no other law or regulation had been put in its place. Thus, there was an immediate need for Bosnia and Herzegovina to take action and honour its responsibility for the savings by regulating the issue. The Framework Law [on Privatisation of Enterprises and Banks of July 1999] did not solve this situation. Thus, by its failure to take adequate action, Bosnia and Herzegovina left the depositors in a situation where there was no legal basis on which they could claim reimbursement of their savings, whether directly from the banks or indirectly from the State through payments on the public debt.
>
> ...
>
> "168. The resolution of the problem of the old foreign currency savings clearly involves considerations of a complex nature. In deciding what measures to take in regard to this issue, the respondent Parties thus enjoy a wide margin of appreciation. However, the Chamber has found that Bosnia and Herzegovina failed to take adequate action in a timely and appropriate manner. The Chamber does not overlook the fact that Bosnia and Herzegovina has not had – and still does not have – the financial means to repay the totality of these savings. Nevertheless, having particular regard to the factual situation of the savings as described in paragraph 166 above, the Chamber cannot find that the failure of Bosnia and Herzegovina to take adequate action to regulate this issue has been in the general interest. Accordingly, the interference has not been justified.
>
> "169. In conclusion, there has been a violation by Bosnia and Herzegovina of the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention."

53. The Chamber confirmed this finding in *Todorović & Others* in October 2002. Bosnia and Herzegovina has not submitted any observations asserting that, since the delivery of the *Poropat & Others* judgement three years ago, it has taken any steps to regulate the matter of old foreign currency savings insofar as this matter falls within its competence and responsibilities.

(b) Responsibility of the Federation of Bosnia and Herzegovina

54. In *Poropat & Others*, the Chamber found a violation by the Federation of Bosnia and Herzegovina of the applicants' right to peaceful enjoyment of possessions with regard to certain aspects of the privatisation programme. As summarised in the section of the Chamber's opinion dealing with the remedies:

> "204. ... The Chamber has found above (paragraph 192) that some of the measures applied in that programme fail to strike a "fair balance" between the general interest and the protection of the property rights of the applicants as holders of old foreign currency accounts. The Federation should therefore be ordered to amend the privatisation programme so as to achieve that balance. The Chamber has pointed out several shortcomings in the programme, in particular the limited, two-year, validity of the privatisation certificates and the unequal treatment of cash and certificates (see paragraphs 186-188 above). It has also noted the uncertainty as to the future status of the foreign currency claims that have not been registered in the Unique Citizen's Account and the claims that have been so registered but are not used in the privatisation process (see paragraphs 185 and 189 above). These are issues that will have to be solved by the Federation in amending the privatisation programme. However, the Chamber considers that it is for the Federation to find, within its margin of appreciation, the appropriate means to achieve the required "fair balance" of interests.
>
> "205. With respect to the applicants' claims for compensation for their foreign currency savings, the Chamber recalls that its findings of violations under Article 1 of Protocol No. 1 to the Convention are not directly based on the applicants' inability to withdraw money from their savings accounts. Rather, the violations found concern the failure of Bosnia and Herzegovina to take adequate action in regard to the savings and the failure of the Federation of Bosnia and Herzegovina to strike a "fair balance" between the relevant interests in regulating this and related issues...."

55. Mindful of the severe difficulties facing the Federation and its banking system, and accepting that conversion of old foreign currency savings into certificates was one possible way to address the claims of holders of old foreign currency savings accounts, the Chamber rejected the applicants' claims for compensation for their savings. Instead, it ordered the Federation of Bosnia and Herzegovina to amend the privatisation programme so as to achieve a fair balance between the interests of the applicants and the general interest.

56. When the Chamber again examined the matter of old foreign currency savings in *Todorović & Others*, it recognised that the Federation had enacted amendments to various relevant laws in an effort to comply with its orders in *Poropat and Others*. The Federation amended the Law on Privatisation of Companies and the Law on Sales of Apartments with Existing Occupancy Right to ensure the equal treatment of certificates and cash. The Federation also amended the Citizens' Claims Law to extend the time limit for using certificates to purchase apartments. It also extended the time limit for using certificates generally from two to four years (*Todorović & Others*, paragraph 146). On 8 January 2001, however, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law — provisions essential to the scheme of conversion of old foreign currency savings into certificates — were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina. This decision was published in the Official Gazette of the Federation on 9 March 2001. As the Chamber has explained in *Todorović & Others* (paragraphs 137-142), in the absence of any action by the Federation legislature to amend the unconstitutional articles, these provisions have ceased to be in force.

57. The Chamber decided that the state of legal uncertainty resulting from the Federation Constitutional Court's decision, the Federation's continued application of laws that had been declared unconstitutional, the lack of responsive amendments to those laws, and the unavailability of relief in the domestic courts, taken together, constituted a violation by the Federation of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention. As a remedy, the Chamber ordered the Federation "to remove the prevailing legal uncertainty by enacting, within six months from the date of delivery of this decision, relevant and binding laws or regulations that clearly address this problem in a manner compatible with Article 1 of Protocol No. 1 to the Convention, as interpreted in the Chamber's decision in *Poropat and Others* and the present decision" (*Todorović & Others*, paragraph 164).

58. In the nine months since the *Todorović & Others* judgement was delivered, no such steps have been taken. Meanwhile, the human rights violations found in *Poropat and Others* and *Todorović and Others* continue. Since the Constitutional Court of the Federation has declared that Articles 3, 7, 11, and 18 of the Citizens' Claims Law — provisions essential to the scheme of conversion of old foreign currency savings into certificates — are not in accordance with the Constitution of the Federation of Bosnia and Herzegovina, there has been no legal basis for denying these applicants access to their old foreign currency savings accounts. Nonetheless, the Federation persists in doing so. This situation, in which the applicants are denied access to their old foreign currency savings in the absence of any legislation validly justifying the bank's refusal to pay out such savings, has endured for more than two years and three months. Meanwhile, the privatisation process has moved forward, despite the Federation Constitutional Court's invalidation of critical substantive legal provisions that would allow the applicants' participation. The Federation's failure to amend those laws to conform to the Agreement and to the Chamber's decisions, as well as to the decision of its own Constitutional Court, has only exacerbated the ongoing violations.

(c) Further remedies

59. The Chamber orders the respondent Parties to pay each of the applicants, within one month of the date of delivery of this decision, 2,000 KM or the full balance of his or her old foreign currency savings accounts, whichever is less, the cost to be borne equally between the respondent Parties. Thus, the respondent Parties shall pay 2,000 KM to each of the applicants, with the possible exception of Ms. Senija Poropat, the applicant in case no. CH/97/52, who shall receive the full balance of her old foreign currency savings if the current value is less than 2,000 KM. In the case of Milenko Višnjevac (case no. CH/99/2997), this payment shall be made in addition to the amount awarded in paragraph 50 above. The amounts of all these payments, including both payments to Mr. Višnjevac, shall be deducted from any future recovery of old foreign currency savings to which the applicants may become entitled, as well as from any amounts the applicants may hold on the Unique Citizen's Account for use in the privatisation process.

60. The Chamber clarifies that it does not make this order on the basis of an assumption that, under the Convention, KM 2,000 is an adequate amount to be paid to the applicants on account of their old foreign currency savings. The adequate payment may be more or less than this amount.

61. As the Chamber has explained in *Poropat and Others* and *Todorović and Others*, what the applicants are entitled to under Article 1 of Protocol No. 1 to the Convention is a clear legal framework that takes into account the general interest without placing an excessive individual burden on the applicants. The applicants have the right to know, from the respondent Parties, whether the use of certificates in the privatisation process is the only way they can obtain something of value for their old foreign currency savings. The applicants are entitled, under the Convention, to know whether Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina intend to respect statements made by officials and even in legislation that the issue of old foreign currency savings will be addressed through the public debt of the respondent Parties. If so, the applicants are entitled to know what percentage of their savings they can expect to recoup and within what time frame.

62. The respondent Parties have failed, over the last seven and one-half years, to provide a clear answer to these questions, and they have also failed to act upon the decisions of the Chamber and of the Federation Constitutional Court. The Chamber notes again that the orders set out in *Poropat and Others* and *Todorović and Others* (*see* paragraph 46 above) remain in effect and should be implemented without any further delay. Further, in the circumstances, the Chamber finds it appropriate to order the respondent Parties to pay the present applicants the sums determined above. With the exception of the payment to Mr. Višnjevac ordered in paragraph 50 above, which is to be borne by the Federation, the respondent Parties shall bear the burden of these payments equally.

63. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina shall report to the Chamber on the steps taken to comply with the above orders within two months from the date of delivery of this decision.

64. The Chamber further reserves the right to order additional remedies in these cases, if warranted.

B. As to the remedies ordered with regard to the violations of Article 6

65. The Chamber found violations of Article 6 by the Federation of Bosnia and Herzegovina in both the *Poropat and Others* and *Todorović and Others* decisions. While these violations appear to be ongoing, the Chamber will not address them in the present decision. The Chamber will, however, reserve the right to order future remedies for the Article 6 violations found in *Poropat and Others* and *Todorović and Others*, if warranted.

VIII. CONCLUSIONS

66. For the above reasons, the Chamber decides:

1. unanimously, to issue a decision on further remedies;

2. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant Milenko Višnjevac (case no. CH/99/2997) the amount corresponding to the DEM 2,000 awarded to him under the First Instance Court judgement of 22 November 1993, along with any and all interest accrued on this amount under that judgement, in addition to the payments ordered below;

3. by 10 votes to 3, to order Bosnia and Herzegovina to pay each of the applicants, within one month of the date of delivery of this decision, 1,000 KM or 50% of the full balance of his or her old foreign currency savings, whichever is less;

4. by 12 votes to 1, to order the Federation of Bosnia and Herzegovina to pay each of these applicants, within one month of the date of delivery of this decision, 1,000 KM or 50% of the full balance of his or her old foreign currency savings, whichever is less;

5. unanimously, to order Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to report to the Chamber on the steps taken to comply with the above orders within two months from the date of delivery of this decision; and

6. unanimously, to reserve the right to order additional remedies in these cases, if warranted.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex Partly dissenting opinion of Mr. Andrew Grotrian, joined by Mr. Jakob Möller

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Andrew Grotrian, joined by Mr. Jakob Möller:

PARTLY DISSENTING OPINION OF MR. ANDREW GROTRIAN, JOINED BY MR. JAKOB MÖLLER

I disagree with the decision of the majority in so far as it orders Bosnia and Herzegovina ("the State") to make payments to the applicants. No remedies were ordered against the State (apart from bearing a share of the applicants' legal expenses) in the original decisions in either *Poropat and Others* or *Todorovic and Others* (see the summaries in paras. 3 and 6 above). Furthermore, responsibility for the present state of "legal uncertainty" rests squarely with the Federation in my view. It is the Federation which has continued to apply laws which have been declared unconstitutional under its Constitution and which has failed to take the action necessary to amend its laws to conform to the Agreement, the Chamber's decisions, and the decision of its own Constitutional Court. It is understandable that the Federation may have difficulty in knowing how to comply with the latter decision since it is almost totally devoid of reasoning. However, any deficiencies in the decision of the Constitutional Court of the Federation are within the responsibility of the Federation.

Accordingly, in my view it is not reasonable to require the State to share in the cost of compensating the applicants. The Federation alone should have been held responsible for the whole payment of 2,000 KM to each applicant.

(signed)
Mr. Andrew Grotrian

(signed)
Mr. Jakob Möller