DECISION ON REVIEW
(delivered on 7 November 2003)

Case no. CH/97/57

Ferid HALILOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 October 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. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

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

Having considered the applicant's request for review of the decision of the First Panel of the Chamber to strike out the aforementioned case;

Having considered the Second Panel's recommendation;

Having regard to its decision of 16 April 1999 accepting the applicant's request for review;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, as well as Rule 65 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin from Odžak, the Federation of Bosnia and Herzegovina. On 18 October 1996, he was arrested by the Republika Srpska police on account of charges of war crimes committed in the municipalities of Odžak and Bosanski Brod/Srpski Brod between June and September 1992. Prior to his arrest, at some point in July 1996, the authorities of the Republika Srpska requested the International Criminal Tribunal for the former Yugoslavia (hereinafter: the "ICTY") to review the possibility of the applicant's arrest and detention, in order to comply with the Rules of the Road. The applicant was arrested before the authorities of the Republika Srpska had received the response of the ICTY. On 9 May 1997, the ICTY issued its opinion that there was "sufficient evidence by international standards to provide reasonable grounds for believing that Ferid Halilović has committed a serious violation of international humanitarian law." On 23 October 1997, the applicant was convicted for war crimes and sentenced to 15 years imprisonment. On 19 May 2001, the applicant was released on probation.

2. The case raises issues under Articles 3, 5 and 6 of the European Convention on Human Rights ("Convention") and Article 2 of Protocol No. 4 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 1 August 1997. The applicant's son, Mr. Samir Halilović, filed the application on behalf of the applicant.

4. On 29 August 1997, the International Police Task Force (hereinafter: the "IPTF") provided the Chamber with its reports relating to the present case.

5. On 23 September 1997, the Chamber transmitted the case to the Republika Srpska for its observations on the admissibility and merits and, particularly, under Articles 5 and 6 of the Convention and Article 2 of Protocol No. 4 to the Convention.

6. On 5 November 1997, the Republika Srpska submitted its observations on the admissibility and merits.

7. On 12 November 1997, the Chamber sent the observations of the Republika Srpska to the applicant's representative and invited him to respond no later than 3 December 1997. The applicant's representative did not respond.

8. On 19 May 1998, the Chamber requested the applicant's representative to inform the Chamber within three weeks whether the applicant appealed against the first instance judgment in his case. The Chamber warned the applicant's representative that it could decide to strike out the application if he would not respond. The applicant's representative did not respond.

9. On 17 June 1998, the Chamber informed the applicant about the difficulties the Chamber had in its correspondence with the applicant's representative. The Chamber requested the applicant to state within three weeks whether he wished to pursue his application before the Chamber. The Chamber warned the applicant that it could decide to strike out the application if he would not respond. The applicant did not respond.

10. On 4 August 1998, the Chamber sent a letter to the governor of the District Prison in Doboj and asked him to deliver a letter to the applicant. In the letter, the Chamber requested the applicant to state within five weeks whether he wished to pursue his application before the Chamber. The Chamber warned the applicant once again that it could decide to strike out the application if he would not respond. The applicant signed for the receipt of the letter on 6 August 1998 but he did not respond.

11. On 15 October 1998, the Chamber struck out the application on the ground that the applicant did not wish to pursue his application before the Chamber.

12. On 8 December 1998, the applicant sent a letter stating the wish to pursue his application before the Chamber. In this letter, the applicant informed the Chamber that he was now in the penal institution in Foča/Srbinje, and claimed that he was not allowed to send letters to the Chamber while incarcerated in the District Prison in Doboj. The applicant also asserted that his defence counsel, Mr. Duško Panić, refused to represent him before the Chamber.

13. On 18 February 1999, the applicant sent another letter repeating what he had said in the letter of 8 December 1998. The applicant also alleged that he was physically and mentally abused in the police station in Doboj from 18 until 22 October 1996. The Chamber considered this letter to be the applicant's request for review of the Chamber's decision to strike out of 15 October 1998.

14. On 16 April 1999, the Chamber accepted the applicant's request for review revoking its decision to strike out the application and restoring the application to the Chamber's list of cases for further consideration.

15. On 22 June 1999, the Chamber retransmitted the case to the Republika Srpska for its observations on the admissibility and merits.

16. On 9 August 1999, the Republika Srpska submitted new observations on the admissibility and merits.

17. On 25 October 1999, the Chamber sent the observations of the Republika Srpska to the applicant and invited him to respond within one month. The Chamber instructed the applicant that his response could contain a claim for compensation. The applicant did not respond.

18. On 13 April 2000, the Chamber sent a letter to the applicant by registered mail giving him one more month to respond to the observations of the Republika Srpska.

19. On 9 May 2000, the applicant submitted his response.

20. On 6 June 2000, the Chamber, under Rule 33(2) of the Chamber's Rules of Procedure, delegated one of its members to investigate the case.

21. On 12 October 2000, the Chamber requested the International Committee of the Red Cross (hereinafter: the "ICRC") and the IPTF to provide details as to the visit of the ICRC to the applicant on 29 October 1996. On 28 November 2000, the IPTF responded referring the Chamber to the ICRC directly. The ICRC did not respond.

22. On 31 January 2001, the Chamber requested both the Republika Srpska and the applicant to submit the contact details of all persons who might have had information on the applicant's alleged maltreatment, including the doctor who treated the applicant in the District Prison in Doboj and other prisoners who were in contact with the applicant in the District Prison in Doboj.

23. On 13 February 2001, the applicant submitted his comments.

24. On 26 February 2001, the Republika Srpska submitted its response, and on 7 May 2001, the Republika Srpska submitted additional observations.

25. On 18 May 2001, the Chamber's representatives visited the applicant in prison in Sarajevo to obtain further information from the applicant regarding possible witnesses to the alleged maltreatment.

26. On 15 November 2002, the Chamber requested the applicant to inform the Chamber whether J.A. and Mr. Dragan Lazić, who allegedly saw the applicant's injuries, were still in Italy and the United States, respectively, and to provide the Chamber with their contact details.

27. On 2 December 2002, the applicant responded informing the Chamber that he is not aware of the whereabouts of J.A. and Mr. Dragan Lazić.

28. The Chamber deliberated on the admissibility and merits of the application on 4 September 1997, 17 July 1998, 15 October 1998, 14 April 1999, 16 April 1999, 5 June 2000, 6 June 2000, 8 January 2001, and 9 October 2003 and adopted the present decision on the latter date.

III. STATEMENT OF FACTS

29. Prior to the outbreak of the 1992-1995 armed conflict in Bosnia and Herzegovina, the applicant lived in Odžak, the present-day Federation of BiH. According to the applicant, on 13 June 1992, he was drafted into the Croat Defence Council (*Hrvatsko Vijeće Obrane*, hereinafter: the "HVO"). On 13 August 1992, the applicant left the HVO and joined the Army of the Republic of Bosnia and Herzegovina (hereinafter: the "Army of the RBiH), the Bosniak-dominated armed forces, in Fojnica, the present-day Federation of BiH.

30. On 6 June 1994, the authorities of the Republika Srpska brought criminal charges against a number of individuals and among them, the applicant. The content of these criminal charges is unknown to the Chamber.

31. It appears that the authorities of the Republika Srpska requested the ICTY in July 1996 to review the possibility of the applicant's arrest and detention for serious violations of international humanitarian law. This request was submitted pursuant to Article 5 of the Rome Agreement of 18 February 1996, commonly referred to as the "Rules of the Road".

32. On 30 August 1996, the Republika Srpska Ministry of Internal Affairs issued a list of suspected war criminals, which included the applicant.

33. On 18 October 1996, the applicant intended to visit his pre-war home in Odžak and therefore drove through the Republika Srpska. However, according to an IPTF incident report, at about 15:30, the Republika Srpska police department in Modriča arrested the applicant. At about 19:00, an IPTF officer spoke with the applicant at the police station. Soon after that, the Republika Srpska police department in Modriča handed the applicant over to the Republika Srpska police department in Doboj.

34. On 19 October 1996, the Republika Srpska police department in Doboj interrogated the applicant. No defence lawyer was present. The applicant stated that he had been drafted into the HVO on 13 June 1992 in Odžak. His task was to supply the internment camps for Serb civilians with food. According to the applicant's statement, members of the HVO and of the armed forces of the neighbouring Croatia regularly beat internees and forced them to dig trenches on the front lines. The applicant stated that he had beaten several internees, one of whom died afterwards, and to have raped one internee. The applicant alleged that he had deserted the HVO on 13 August 1992 and joined the Army of the RBiH in Fojnica.

35. On the same date, the Republika Srpska police department in Doboj issued a procedural decision ordering the applicant's detention because there were grounds to suspect that the applicant had committed war crimes against Serb civilians in the municipalities of Odžak and Bosanski Brod/Srpski Brod between June and September 1992. This procedural decision states that the applicant was arrested on 19 October 1996 at 16:30.

36. On 21 October 1996, the Republika Srpska police department in Doboj interrogated the applicant once more. The applicant stated in the course of the interrogation that he had told an

internee that if she has sexual relations with him, she and her family will receive better treatment in the camp, and she agreed to do this.

37. On 22 October 1996, the Republika Srpska police department in Doboj brought criminal charges against the applicant to the First Instance Public Prosecutor's Office in Doboj because there were grounds to suspect that the applicant had committed war crimes against Serb civilians in the municipalities of Odžak and Bosanski Brod/Srpski Brod between June and September 1992. The charges consisted of various acts including the beating of a number of internees, which resulted in two deaths, and rape of several internees.

38. On 22 October 1996, the applicant was brought before the investigative judge of the First Instance Court in Doboj. The minutes note that as the applicant did not want to engage his own counsel, the court, *ex officio*, appointed Mr. Dragan Lazić to represent the applicant. The investigative judge then examined the applicant in the presence of Mr. Dragan Lazić. During the interrogation, the applicant stated that he had beaten an internee who died two days after that. Allegedly, the camp commander, Mr. Anto Golubović, threatened to kill the applicant if he did not participate in the beating. The applicant claimed to have kicked the victim 3-4 times with a rifle on his back. The applicant also stated that he had slapped three internees in the face. The applicant claimed that the camp commander, Mr. Anto Golubović, had ordered him to do that because the applicant had previously shared with the three internees his own food. The investigative judge did not ask the applicant about the allegations of coerced sex and rape.

39. On 22 October 1996, the investigative judge of the First Instance Court in Doboj issued a procedural decision ordering the applicant's detention because of the reasonable suspicion that the applicant had committed war crimes against civilians. The First Instance Court in Doboj subsequently referred the case to the First Instance Court in Modriča.

40. At some point in November, from the documents before the Chamber, it is apparent that the applicant and his family engaged the lawyer Mr. Zoran Rakić, from Odžak, as additional defence counsel.

41. On 22 November 1996, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention for two months.

42. On 23 November 1996, the applicant received a visit by the IPTF. The applicant informed the IPTF that he had been beaten up by three or four police officers in the police station in Doboj, and that he was forced to sign certain papers and to give certain verbal statements while being video-recorded inside the police station in Doboj. The applicant informed the IPTF that he did not receive any visits from his family and that he was not allowed to talk in private to his defence counsel. The applicant said that he had no complaints against the prison guards.

43. On 26 November 1996, the IPTF met with the applicant's *ex officio* defence counsel, Mr. Dragan Lazić. Mr. Lazić also informed the IPTF that he thought that the applicant had been beaten shortly after his initial detention because of the way he moved, but could not prove this since he was not allowed to speak with him privately.

44. On 20 January 1997, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention for another two months.

45. On 5 February 1997, the investigative judge of the First Instance Court in Modriča examined the applicant in the presence of his defence counsel, Mr. Dragan Lazić. The applicant denied everything that he had previously confessed at the police station in Doboj and to the investigative judge of the First Instance Court in Doboj. The applicant stated that the Republika Srpska police department in Doboj had coerced him to confess. The applicant allegedly did not deny his previous confession before the investigative judge of the First Instance Court in Doboj because he was afraid that he would be sent back to the police.

46. On 24 February 1997, the First Instance Public Prosecutor's Office in Modriča indicted the applicant for war crimes and, specifically, for killings, torture, inhuman treatment, great suffering or serious injuries to body or health, acts of intimidation and terror, unlawful confinement, compelling to service in forces of a hostile power and forced labour.

47. On 27 February 1997, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention for the next two months.

48. On 27 March 1997, a representative from the United Nations Mission to Bosnia and Herzegovina -- Civil Affairs (hereinafter: UN Civil Affairs) met with Mr. Dragan Lazić to discuss the case and also visited the applicant in prison. At this time, the applicant stated that he had hired Mr. Lazić in a private capacity as his defence. As to the other lawyer, Mr. Rakić, the applicant complained of the fact that he was not permitted to represent him but was only allowed to act as the "assistant" to Mr. Lazić, which means that he could not have private meetings with Mr. Rakić.

49. The trial against the applicant commenced before the First Instance Court in Modriča on 21 April 1997, despite the fact that representatives from the Office of the High Representative (hereinafter: the "OHR") requested that it be postponed pending the opinion of the ICTY. The trial was monitored by members of the international community, including representatives from the IPTF and the OHR. According to the minutes of the trial, the applicant stated that he wished to be represented by Mr. Dragan Lazić and by Mr. Zoran Rakić. The President of the Court informed the applicant that Mr. Zoran Rakić could only serve as Mr. Dragan Lazić's assistant in these criminal proceedings, as he was not part of the Republika Srpska Bar Association. Mr. Dragan Lazić represented the applicant and first requested the court to postpone the trial pending the response of the ICTY. The trial nevertheless commenced with the applicant being questioned by the court and cross-examined by the Public Prosecutor. After these deliberations of a few hours, the Court announced that the trial would be postponed.

50. On 9 May 1997, the ICTY informed the Republika Srpska Ministry of Justice that the evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law.

51. On 12 May 1997, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention for the next two months.

52. On 19 May 1997, the trial resumed and the court held additional sessions on 29 May 1997, 4 June 1997, 19 June 1997, 26 June 1997, 22 August 1997, 3 September 1997 and 23 October 1997. As of the session of 19 June 1997, Mr. Duško Panić defended the applicant instead of Mr. Dragan Lazić, who had moved to the United States. The trial was also monitored by representatives from the international community, including representatives from the IPTF, the UN Civil Affairs, and the Organisation for Security and Cooperation in Europe (hereinafter: the "OSCE").

53. On 23 July 1997, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention for the next two months.

54. On 30 September 1997, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention for the next two months.

55. On 23 October 1997, the First Instance Court in Modriča issued a judgment finding the applicant guilty of war crimes and, specifically, of participating in the killings of four internees, beatings of a number of internees, forcing internees to sing Ustaša songs and Četnik songs and forcing several internees to perform sexual acts on each other. The First Instance Court in Modriča sentenced the applicant to 15 years of imprisonment, noting that the time spent in prison from 22 October 1996 counted towards the sentence. On the same date, the First Instance Court in Modriča issued a procedural decision extending the applicant's detention until the judgment of 23 October 1997 has become final and binding.

56. On 25 February 1998, the First Instance Public Prosecutor's Office in Modriča appealed against the judgment of 23 October 1997 requesting that the applicant be sentenced to death.

57. On 27 February 1998, Mr. Duško Panić appealed against the judgment of 23 October 1997. In his opinion, the judgment was incorrect in that it did not determine the exact date of the applicant's joining the HVO and the exact dates of the particular criminal acts for which the applicant was charged. Mr. Duško Panić argued that the applicant could not have been found guilty of several criminal acts for which he was charged because they occurred prior to his having been drafted into the HVO. Mr. Duško Panić also asserted that the applicant's right to defence counsel had been violated in that Mr. Zoran Rakić had been permitted to appear before the court only in the capacity of an assistant defence counsel.

58. On 10 August 1998, the District Court in Doboj confirmed the judgment of 23 October 1997. The court relied on the testimony of several witnesses, according to which the applicant was seen in the internment camps already in May 1992. The court therefore decided that it was possible that the applicant had committed the criminal acts for which he was charged. The court disagreed with Mr. Duško Panić that the applicant's right to defence counsel had been violated because of the standing of Mr. Zoran Rakić as an assistant defence counsel. The court refused the request of the First Instance Public Prosecutor's Office in Modriča to sentence the applicant to death giving weight to several mitigating factors such as the applicant's parenthood and non-criminal past. The court took into account also the applicant's low rank in the hierarchy of the internment camps.

59. On 14 October 1998, the applicant was transferred from the District Prison in Doboj to a penal institution in Foča/Srbinje, still in the Republika Srpska.

60. On 30 November 1999, the applicant was transferred to a penal institution in Sarajevo, the Federation of BiH, as part of a prisoner-exchange program between the Federation of BiH and the Republika Srpska.

61. On 19 May 2001, the applicant was released on probation. He currently lives in Odžak, the Federation of BiH.

IV. RELEVANT LEGAL FRAMEWORK

A. The relevant provisions on criminal law

62. A new Criminal Code of the Republika Srpska entered into force on 1 July 2003 (Official Gazette of the Republika Srpska — hereinafter "OG RS" — no. 50/03). However, at the time of the applicant's arrest, pre-trial detention and trial, the criminal law provisions applicable to the present case were contained in the Criminal Code of the Socialist Federal Republic of Yugoslavia, which was adopted as law of the Republika Srpska on 17 August 1993 (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" – nos. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90; OG RS – nos. 12/93, 19/93, 26/93, 14/94 and 3/96). Prior to the current Criminal Code in force, the Republika Srpska had previously adopted its own Criminal Code which entered into force on 1 October 2000 (OG RS nos. 22/00, 33/00 and 37/01).

63. At the relevant time, war crimes against the civilian population were punishable under Article 142 paragraph 1:

> "Anyone who – in violation of the rules of international law in time of war, armed conflict or occupation – orders making the civilian population, populated areas, individual civilians or those placed *hors de combat* the object of attack, when this caused death or serious injury to body or health; launching an indiscriminate attack affecting the civilian population; subjecting the civilian population to killings, torture, inhuman treatment, biological, medical or other scientific experiments, removal of tissue or organs for transplantation, great

suffering or serious injuries to body or health; deportation or transfer or forced assimilation into another ethnic group or conversion to another religion; enforced prostitution or rape; acts of intimidation or terror, taking of hostages, collective punishments, unlawful confinement in concentration camps or other unlawful confinement, depriving of the rights of fair and regular trial; compelling to service in the forces of a hostile Power or in its intelligence service or administration; forced labour, starvation, confiscation of property, pillage of property, extensive destruction or appropriation of property not justified by military necessity and carried out unlawfully and wantonly, demanding unlawful and extensive contributions and requisitions, devaluation of a local currency, or unlawful issuing of a local currency, or anyone who commits any of the aforementioned crimes, shall be punished by imprisonment for at least five years or by the death penalty."

B. The relevant provisions on criminal procedure

64. A new Code of Criminal Procedure of the Republika Srpska entered into force on 1 July 2003 (OG RS no. 49/03). However, the previous Code of Criminal Procedure of the former Socialist Federal Republic of Yugoslavia (OG SFRY nos. 26/86, 74/87, 57/89 and 3/90) was applied in the Republika Srpska by the Law on Application of the Code of Criminal Procedure (OG RS no. 4/93), as later amended (OG RS nos. 26/93, 14/94, 6/97 and 61/01). This former Code of Criminal Procedure is applicable in the present case and its relevant provisions are cited below.

65. Article 70, paragraph 1 of the Code of Criminal Procedure of the Socialist Federal Republic of Yugoslavia stated, that if the accused is blind, deaf, or incapable of defending him or herself, or the proceedings involve a crime for which the death penalty may be prescribed, the accused must have defence counsel as of the first questioning.

66. At the time of the applicant's arrest, pre-trial detention and trial, Article 191 paragraphs 1 and 2 provided as follows:

"1. "Detention shall always be ordered against a person if there is reasonable suspicion that he has committed a crime for which the law prescribes the death penalty.

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

0) if he conceals himself or if other circumstances exist which suggest the strong possibility of flight;
0) if there is a warranted fear that he will destroy, hide, alter or falsify evidence or clues important to criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, fellow accused or accessories in terms of concealment;
2) if particular circumstances justify the fear that the crime will be repeated or an attempted crime will be completed or a threatened crime will be committed and for those offences a sentence of imprisonment of three years or a more severe penalty is prescribed;
2) if the crime is one for which a prison sentence of ten years or a more severe penalty may be pronounced under the law and if, because of the manner of execution, consequences or other circumstances of the crime, there has been or might be such disturbance of the citizenry that the ordering of custody is urgently necessary for the unhindered conduct of criminal proceedings or human safety."

67. Article 192, in relevant part, read:

"1. Detention shall be ordered by the investigative judge of the competent court.

2. Detention shall be ordered in a written procedural decision containing the following: the name of the person being taken into detention, the crime that he is charged with, the legal

basis for detention, instruction as to the right of appeal, a brief reasoning, with the view that the basis for ordering detention is specifically reasoned, the official seal, and the signature of the judge ordering detention.

3. The procedural decision on detention shall be presented to the person to whom it pertains at the time of his arrest and at the latest 24 hours from the time of his arrest. The time of arrest and the time of presentation of the procedural decision must be indicated in the record.

4. The person taken into detention may appeal against the procedural decision on detention to the panel of judges (Article 23, paragraph 6) within 24 hours from the time of presentation of the procedural decision to him. If the person taken into detention is examined for the first time after that period has expired, he may file the appeal at the time of his examination. The appeal, a copy of the minutes of the examination, if the person taken into detention has been examined, and the procedural decision on detention shall be immediately referred to the panel of judges. The appeal shall not have suspensive effect."

68. Article 193 read:

"1. The investigative judge shall immediately inform a person, who has been taken into detention and brought before him, that he may hire defence counsel, who may attend his examination, and, if necessary, he shall help him to find defence counsel. If within 24 hours from the time when he has been instructed about this right, the person taken into detention does not obtain defence counsel, the investigative judge shall immediately examine him.

2. If the person taken into detention declares that he will not hire defence counsel, the investigating judge shall examine him within 24 hours.

3. If in cases where defence counsel is required by law (Article 70, paragraph 1) the person taken into detention does not hire defence counsel within 24 hours from the time when he has been instructed about this right or if he declares that he is not going to hire defence counsel, an *ex officio* defence counsel shall be appointed for him.

4. Immediately after the examination of the person taken into detention, the investigative judge shall decide whether to release him. If the investigative judge considers that this person should remain in detention, the investigative judge shall immediately inform the public prosecutor to that effect unless the latter has already submitted a request to conduct an investigation. If within 48 hours from the moment of being informed of the person's detention the public prosecutor does not file a request to conduct an investigation, the investigative judge shall release the person taken into detention."

69. Article 195 read:

"1. Any authorised law enforcement officer may arrest a person for any of the reasons envisaged in Article 191 of this Law, but he shall bring that person without delay before the investigative judge of the competent court or before the investigative judge of the lower court in whose jurisdiction the crime has been committed, if the seat of that lower court can be reached more quickly. When an authorised law enforcement officer brings a person before the investigative judge, he shall inform the investigative judge about reasons for and time of arrest.

2. If exigent circumstances made it impossible to bring the arrested person before the investigative judge within 24 hours, the officer shall give a specific justification for this delay. The officer shall give a specific justification for the delay also when the arrested person has been brought before the investigative judge upon the latter's request.

3. If, because of the delay in bringing the arrested person before the investigative judge, the latter is unable to render a procedural decision on this person's detention within the period referred to in Article 192 paragraph 3 of this Law, he shall decide thereupon immediately after the arrested person has been brought before him."

70. Article 196 read:

"1. The law enforcement agency may, in exceptional circumstances, order detention before investigation has commenced, if it is necessary to gather information required in order to conduct criminal proceedings against a particular person with a view to establishing his identity, checking his alibi or other reasons, under a condition that the reasons envisaged in Article 191 paragraph 1 and paragraph 2 points 1 and 3 of this Law exist. This may be done for the reasons envisaged in Article 191 paragraph 2 point 2 only if there is a reasonable fear that the person at issue will destroy clues to the crime.

2. The law enforcement agency may order detention also when the investigative judge has entrusted it with performing of certain investigative actions (Article 162 paragraph 4) under a condition that the reasons envisaged in Article 191 of this Law exist.

3. Detention ordered by the law enforcement agency shall last up to three days from the time of arrest. Article 192 paragraphs 2 and 3 of this Law shall apply *mutatis mutandis* to this detention. The person taken into detention may appeal against the procedural decision on detention to the competent court's panel within 24 hours from the time of presentation of the procedural decision to him. The panel shall render a decision within 48 hours from the time of filing the appeal. The appeal shall not have suspensive effect. The law enforcement agency shall provide the person taken into detention with legal aid necessary for the filing of appeal.

4. The law enforcement agency shall immediately inform the public prosecutor of the person's detention and in the case referred to in paragraph 2 of this Article, the law enforcement agency shall communicate such information to the investigative judge, who may request the law enforcement agency to immediately bring the person taken into detention before him.

5. If, after the three-day time-limit has expired, the law enforcement agency did not release the person taken into detention, it shall act in accordance with Article 195 of this Law, and the investigative judge before whom the person has been brought shall act in accordance with Article 193 of this Law."

71. At the time of the applicant's arrest and pre-trial detention, Article 197 read:

"1. On the basis of the investigative judge's decision the accused may be held in detention up to one month from the date of his arrest. At the end of that period the accused may be kept in detention only on the basis of a decision to extend detention.

2. The panel of judges (Article 23 Paragraph 6) may extend one's detention for up to two months. An appeal is permitted against the panel's decision, but the appeal shall not have suspensive effect. If proceedings is being conducted against the accused for a crime carrying a prison sentence of more than 5 years or a more severe penalty, a panel of a higher court may for important reasons extend one's detention for up to another three months. The decision to extend detention shall be made on the argued recommendation of the investigative judge or public prosecutor. An appeal is permitted against this decision, but the appeal shall not have suspensive effect.

3. If an indictment is not brought before the expiry of the time-limits referred to in paragraph 2 of this Article, the accused shall be released."

Paragraph 2 of this Article was amended on 2 April 1997 so as to read:

> "2. The panel of judges (Article 23 Paragraph 6) may extend one's detention for up to two months. An appeal is permitted against the panel's decision, but the appeal shall not have suspensive effect. If proceedings are being conducted against the accused for a crime carrying a prison sentence of more than 5 years or a more severe penalty, a panel of the Supreme Court may for important reasons extend one's detention for up to another three months. The decision to extend detention shall be made on the argued recommendation of the investigative judge or public prosecutor."

72. Article 199 read:

> "1. Once the indictment has been presented to the court and until the end of the main trial, detention may be ordered or terminated only by a procedural decision of the panel of judges after hearing of the public prosecutor, when proceedings are being conducted on his request.
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> 2. At the end of two months from the date when the last procedural decision on detention became final and binding, even in the absence of a proposal by a party, the panel of judges shall examine whether the reasons for detention still exist and shall render a decision to extend or terminate detention.
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> 3. An appeal against the procedural decision referred to in paragraphs 1 and 2 of this Article shall not have suspensive effect.
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> 4. An appeal is not permitted against the procedural decision of the panel of judges rejecting a proposal to order or to terminate detention."

C. Rome Agreement of 18 February 1996 ("Rules of the Road")

73. On 18 February 1996, the Parties to the General Framework Agreement for Peace in Bosnia and Herzegovina agreed on certain measures to strengthen and advance the peace process. The second sub-paragraph of paragraph 5, entitled "Co-operation on War Crimes and Respect for Human Rights", reads as follows:

> "Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant, or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal. Procedures will be developed for expeditious decision by the Tribunal and will be effective immediately upon such action."

74. The expressions "International Tribunal" and "Tribunal" in the previous paragraph refer to the ICTY, which has its seat in The Hague.

75. The above-quoted provision will be referred to in this decision as the Rules of the Road.

V. COMPLAINTS

76. In his original application, the applicant complains that the Republika Srpska authorities detained him before the ICTY reviewed the evidence against him in accordance with the Rules of the Road. Furthermore, the applicant complains that the Republika Srpska violated certain procedural guarantees in the course of the criminal proceedings against him and because the Republika Srpska restricted his freedom of movement.

77. In his letter received on 18 February 1999, the applicant additionally complains that the Republika Srpska police maltreated him in the period from 18 October to 22 October 1996 in order to obtain his confession, that his privately-hired defence counsel from the Federation of BiH was only able to act as the "assistant" to his other defence counsel before the Court, and that all of his defence counsel were acting in collusion with the authorities of the Republika Srpska.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

78. In the submission of 5 November 1997, the Republika Srpska submits that the application is inadmissible because the applicant did not exhaust available domestic remedies (at that time, the applicant was entitled to appeal against the first instance judgment). Furthermore, the Republika Srpska asserts that the applicant's detention and trial met the requirements provided for in Articles 5 and 6 of the Convention.

79. In the submission of 9 August 1999, the Republika Srpska alleges that the applicant has not raised the issue of his maltreatment before the Republika Srpska courts. The Republika Srpska is of the opinion that the applicant's allegation under Article 3 of the Convention is unsubstantiated. The Republika Srpska further asserts that the applicant's detention and trial met the requirements provided for in Articles 5 and 6 of the Convention. As to the alleged violation of Article 2 of Protocol No. 4 to the Convention, the Republika Srpska submits that that provision of the Convention is not applicable in the present case. The Republika Srpska also forwarded to the Chamber a letter from the District Prison in Doboj. According to this letter, the applicant's physical conditions were good when he arrived to the District Prison in Doboj on 19 October 1996. While in the prison, the applicant received numerous visits from his relatives, his defence counsels and representatives of the Organisation for Security and Cooperation in Europe (hereinafter: the "OSCE"), the ICRC and the IPTF.

80. In the submission of 26 February 2001, the Republika Srpska informs the Chamber that the applicant shared a cell in the prison in Doboj with S.V. and B.V. and that Ms. Anđa Sušić treated the applicant in the prison in Doboj. According to the Republika Srpska, Mr. Đorđo Lukić was also in contact with the applicant in the prison in Doboj in the capacity of an assistant to the prison governor.

81. In the submission of 7 May 2001, the Republika Srpska contests the applicant's allegation that the police maltreated him in the period from 18 until 22 October 1996, and to support this, states that, according to the minutes of 22 October 1996, the applicant did not report the maltreatment to the investigate judge of the First Instance Court in Doboj.

B. The applicant

82. In the application, the applicant complains because the Republika Srpska authorities did not meet the requirements of the Rules of the Road when they detained him. The applicant alleges that the Republika Srpska violated his rights relating to criminal proceedings as provided for by Article 6 of the Convention and his right to liberty of movement as provided for by Article 2 of Protocol No. 4 to the Convention.

83. In his submission received on 18 February 1999, the applicant claims that he was physically and mentally abused in the police station in Doboj from 18 until 22 October 1996. He also claims that his defence counsel, Messrs. Dragan Lazić, Duško Panić and Zoran Rakić, were in collusion with the Republika Srpska courts in the course of the trial. The applicant alleges not to have committed any of the criminal acts for which he was convicted.

84. In the submission of 9 May 2000, filed after he had been transferred to a penal institution in Sarajevo, the applicant claims that he was severely beaten in the police station in Doboj on 18 and

19 October 1996. On 19 October 1996, he was transferred from the police station to the District Prison in Doboj. From 19 until 22 October 1996, he was transferred from the prison to the police station for the purposes of interrogation on a daily basis. The applicant alleges that his maltreatment by the police continued until 22 October 1996. According to the applicant, the police tied him to a radiator, hit him, put a gun barrel into his mouth and put glass on his throat, in order to obtain his confession and because of his Bosniak origin. The applicant alleges that he was forced to sign several documents that the Republika Srpska courts considered his confession. When the applicant was brought before the investigative judge of the First Instance Court in Doboj on 22 October 1996, he allegedly took his shirt off and showed to the investigative judge and his defence counsel traces of the maltreatment. However, upon an alleged instruction by the investigative judge, he withdrew his complaint and repeated all that he had previously said to police interrogators. The applicant claims that he was very afraid of being handed over to the police again if he would change his statements. The applicant further claims that after the beatings in the police station, he could not get into bed without assistance and that his cell-mate, J.A., helped him once. According to the applicant, the prison governor initially refused to provide him with medical aid. At the beginning of November 1996, the applicant was allowed to visit a doctor but claims that he did not receive proper medical attention (he was allegedly only prescribed Bactrim®[1]). The applicant alleges that the doctor asked him intimidating questions such as “How many Serbs have you killed?” and “How many houses have you set on fire?” The applicant asserts that he was too afraid to complain about the conditions of his incarceration while incarcerated in the territory of the Republika Srpska and his defence counsels refused to file such complaints. On 27 and 29 October 1996, the applicant received visits from the representatives of the IPTF and the ICRC. They were allegedly appalled when the applicant showed them bruises on his body.

85. In the same submission, the applicant states that he feels discriminated against because, to the best of his knowledge, no person of Serb origin has been prosecuted for war crimes by the Republika Srpska authorities. The applicant repeated his previous allegation that his defence counsels, Messrs. Dragan Lazić, Duško Panić and Zoran Rakić, were in collusion with the Republika Srpska courts in the course of the trial. The applicant also requests the Chamber to order the Republika Srpska to compensate him for his legal expenses, although he can not provide evidence of these costs as his defence counsel never provided him with any receipts. The applicant also requests to be compensated by the Republika Srpska for each day of his incarceration because, in the applicant’s opinion, his incarceration has been unfounded. The applicant submits a claim for non-pecuniary damages because his health has deteriorated as a result of the maltreatment and lengthy period of incarceration and because of the stigma stemming from his conviction.

86. In the submission of 13 February 2001, in response to the Chamber’s letter, the applicant states that regarding the maltreatment in the police station in Doboj, he did not see the faces of the persons who beat him and he does not know their names. Due to this severe beating, the applicant asserts that he found blood in his urine. The applicant also claims that the police in Doboj, in order to force his confession, threatened to execute him, and with this aim took him to a bridge near Doboj. The doctor who treated the applicant while incarcerated in Doboj did not provide him with any written findings. The applicant thus cannot prove his allegation that he was maltreated, nor does he know the name of the doctor. The applicant claims that he had a “staged” trial, *i.e.* his defence counsels and the witnesses were all acting under the instructions of the Republika Srpska authorities. The applicant does not know the names of the prisoners who he shared a cell with in the prison in Doboj. The applicant adds that even if he knew their names, they would not support his allegations due to their Serb and his Bosniak ethnicity. The applicant states that he has no more money to pay lawyers and therefore he relies entirely on the Chamber to prove his innocence and to re-establish his integrity and reputation.

[1] Bactrim, (Co-trimoxazole) an antibacterial combination drug, is prescribed for the treatment of certain urinary tract infections, severe middle ear infections in children, long-lasting or frequently recurring bronchitis in adults that has increased in seriousness, inflammation of the intestine due to a severe bacterial infection, and travellers' diarrhoea in adults. Bactrim is also prescribed for the treatment of Pneumocystis carinii pneumonia, and for prevention of this type of pneumonia in people with weakened immune systems.

87. During the visit of the Chamber's representatives on 18 May 2001, the applicant submitted that he reported the maltreatment and showed his injuries to the investigative judge, in the presence of his defence counsel, Mr. Dragan Lazić, during his examination on 22 October 1996. Mr. Dragan Lazić subsequently moved to the United States. The applicant also states that he initially shared a cell in the prison in Doboj with J.A., who subsequently moved to Italy, and a certain Lazo, who subsequently died. Later on, the applicant shared a cell in the prison in Doboj with S.V. and B.V. These two prisoners did not see the applicant's injuries but were only told by the applicant about the alleged maltreatment. The applicant asserts that neither his family nor a doctor visited him in the prison in the first one to two months.

VII. OPINION OF THE CHAMBER

A. Admissibility

88. The applicant alleges violations of his right to be free from torture and degrading treatment (Article 3 of the Convention), his right to freedom of movement (Article 2 of Protocol No. 4 to the Convention), his right to liberty and security (Article 5 of the Convention) and his right to a fair trial (Article 6 of the Convention). Before considering the merits of the application the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

0. Article 3 of the Convention

89. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept….In so doing, the Chamber shall take into account the following criteria: (a) …that the application has been filed with the Commission within six months from such date on which the final decision was taken."

90. The Chamber notes that the application was lodged on 1 August 1997, by the applicant's son. In this application, the applicant did not raise any allegations related to maltreatment. On 18 February 1999, after learning that the Chamber had struck out his application, the applicant alleged that the Republika Srpska police maltreated him in the period from 18 October to 22 October 1996. The applicant states that he never formally raised the maltreatment issue before the court because the same persons who maltreated him were the ones who "brought charges, convicted him, and defended him." In essence, the applicant states that there were no effective domestic remedies available to him. However, the Chamber also takes note of the fact that the applicant, on 5 February 1997, informed the investigative judge of the First Instance Court in Modriča that his confession had been coerced and that he had been maltreated while held at the Doboj police station. The applicant also alleges, in a letter received on 9 May 2000, that he complained to the investigative judge on 22 October 1996 of the maltreatment, and took off his shirt to show the wounds. However, the minutes taken at this time, signed by the applicant, do not reflect this.

91. The respondent Party submits that the applicant's allegations are unsubstantiated and points out that the applicant did not initially raise this claim before the Chamber, and never informed the domestic organs of this alleged mistreatment, neither during the pre-trial stage or at trial.

92. The Chamber notes that according to the Agreement, the time limit of six months commences with the date of the "final decision". Alternatively, when there is no domestic remedy available, the European Commission for Human Rights has held that the six months start running from the date the complained of violation occurred (see, for example, European Commission for Human Rights*, X v. the United Kingdom*, decision of 10 December 1976, Decisions and Reports 8, pages 212-213). As the applicant essentially submits that he never formally complained of the

maltreatment because there is no effective domestic remedy in this regard, the Chamber finds that for the purposes of the admissibility of this claim before the Chamber, the six-months started running at the time the alleged maltreatment occurred. The applicant first raised the issue of maltreatment before the Chamber on 18 February 1999, approximately two-and-a-half years after the alleged maltreatment had occurred. Even if the Chamber were to consider the date the applicant informed the domestic authorities (5 February 1997) of the maltreatment as the relevant date for the purposes of Article VIII(2)(a) of the Agreement, the application would still be inadmissible.

93. Accordingly, the Chamber decides to declare this part of the application inadmissible pursuant to Article VIII(2)(a) of the Agreement.

2. Article 2 of Protocol No. 4 to the Convention

94. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers to be incompatible with the Agreement, manifestly ill-founded, or an abuse of the right to petition.

95. The applicant complains that the Republika Srpska violated his right to liberty of movement.

96. The respondent Party submits that Article 2 of Protocol No. 4 to the Convention is not applicable in the present case.

97. The Chamber agrees with the respondent Party that Article 2 of Protocol No. 4 is not relevant to the case. Article 2 of Protocol No. 4 paragraph 1 provides as follows:

> "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

98. Whereas Article 5 of the Convention concerns the deprivation of personal liberty, Article 2 of Protocol No. 4 concerns restrictions upon freedom of movement. In the Chamber's view, the applicant's arrest and detention concerns the deprivation of his personal liberty which also entails a restriction upon his freedom of movement. No separate issue therefore arises with regard to the applicant's freedom of movement. The Chamber thus finds the applicant's complaint with regard to Article 2 of Protocol No. 4 of the Convention to be manifestly ill-founded.

99. The Chamber declares this part of the application inadmissible pursuant to Article VIII(2)(c) of the Agreement.

3. Conclusion as to admissibility

100. Accordingly, the Chamber finds that the application is inadmissible insofar as it pertains to the alleged violations of Article 3 of the Convention and Article 2 of Protocol No. 4 to the Convention. The application is admissible insofar as the applicant complains of violations of his right to liberty in connection with Article 5 of the Convention and insofar as the applicant complains of a lack of fair trial in connection with Article 6 of the Convention.

B. Merits

101. Under Article XI of the Agreement, the Chamber must address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention and the other international agreements listed in the Appendix to the Agreement.

0. Article 5 of the Convention – the compliance by the respondent Party with the Rules of the Road

102. The relevant parts of Article 5, paragraph 1 of the Convention provide as follows:

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

103. Under the Rules of the Road, "persons … may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal". Charges of war crimes concern exactly those "serious violations of international humanitarian law" to which the Rules of the Road refer. In previous cases, the Chamber has held that the provisions of the Rules of the Road apply as domestic law both in the Federation of BiH and the Republika Srpska as of 18 February 1996. Thus, in order for any arrest or detention on suspicion or charges of war crimes to be considered "in accordance with the law" within the meaning of Article 5 of the Convention, the opinion of the Prosecutor of the ICTY must be first obtained (see, for example, case no. CH/97/34 *Šlijvo v. the Republika Srpska*, decision on the admissibility and merits of 16 July 1998, paragraphs 107-109, Decisions and Reports; case no. CH/98/1324, *Hrvačević v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, decision on the admissibility and merits of 8 February 2002, paragraphs 61-64, Decisions and Reports January—June 2002).

104. It is undisputed that the applicant was arrested on 18 October 1996 on charges of war crimes and that the opinion of the ICTY, stating that the evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law, was obtained only on 9 May 1997. The applicant's arrest and detention from 18 October 1996 to 9 May 1997, *i.e.* for more than 6 months, were therefore not "in accordance with a procedure prescribed by law" as required by Article 5, paragraph 1(c).

105. As to the applicant's detention after 9 May 1997, the Chamber notes that the applicant has not alleged that it was not "in accordance with a procedure prescribed by law", nor is any violation of the law apparent.

106. The Chamber concludes that the applicant's arrest and detention from 18 October 1996 to 9 May 1997 constituted a violation of Article 5, paragraph 1 of the Convention.

0. Article 6 of the Convention

107. Article 6 paragraph 1 of the Convention, so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law….
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> . to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> . to have adequate time and facilities for the preparation of his defence;
>
> . to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;…."

108. The Chamber notes that the applicant generally claimed that his defence counsel were not effective and that they, both the *ex officio* and privately-hired counsel, were acting in collusion with the Republika Srpska. The applicant also specifically complains of the fact that his privately-hired defence counsel, as he was not a member of the Republika Srpska Bar Association, was only able to act as an assistant to the *ex officio* defence counsel. The applicant also generally complains of the lack of a fair trial, although he did not specify this claim either, except for the allegation that his defence counsel were in collusion with the authorities of the Republika Srpska.

109. The respondent Party submitted that the applicant's allegations are unfounded.

110. As to the complaint that his privately-hired defence counsel from the Federation of BiH, Mr. Zoran Rakić, was only able to act as the assistant to his other defence counsel, the Chamber observes that the applicant states that this also meant that he could not meet with him in private. The Chamber notes that the Convention does not expressly guarantee the right of an accused to communicate freely with his defence counsel, for the preparation of his defence or otherwise. As the European Commission on Human Rights (hereinafter: "the Commission") has stated, the fact that this right is not specifically mentioned in the Convention does not mean that it may not be inferred from its provisions, and in particular those of Article 6, paragraphs 3(b) and (c). The Commission has recognised that the possibility for an accused to communicate freely with his lawyer is a fundamental part of the preparation of his defence (*Can v. Austria* case, Opinion of the European Commission of Human Rights as expressed in the Commission's report of 12 July 1984, Series A no. 96, p. 17, paragraph 52). However, the Commission has added that, in the absence of an express provision, it cannot be maintained that the right to have conversations with one's lawyer and exchange confidential information with him, as implicitly guaranteed by Article 6 paragraph 3, is without restrictions.

111. In the case at hand, the Chamber recalls that Mr. Zoran Rakić was not the applicant's only defence counsel. The other *ex officio* appointed defence counsel, Mr. Dragan Lazić, a member of the Republika Srpska Bar Association, was able to meet with the applicant in accordance with the provisions of the Law on Criminal Procedure. Additionally, Mr. Dragan Lazić later became the applicant's privately-hired defence counsel. In a UN Civil Affairs report of 2 April 1997, Mr. Dragan Lazić is reported as saying that he had no problems in meeting with his client and preparing his defence, but that it is true that Mr. Zoran Rakić has been denied access to meet with the applicant.

112. In light of all of the above, the Chamber finds that the fact that one of the applicant's privately-hired defence counsel was only permitted to participate in the court proceedings as an assistant to the defence counsel from the Republika Srpska, and was not allowed to meet privately with the applicant, does not amount to a violation of Article 6, paragraphs 3 (b) and (c), nor did it affect the overall ability of the applicant to defend himself and his right to enjoy a fair trial within the meaning of Article 6 of the Convention.

113. As to the more general claims of a lack of fair trial and that his defence counsel ---- Mr. Dragan Lazić, his *ex officio* and later privately-hired defence counsel, Mr. Zoran Rakić, his privately hired defence counsel from the Federation, and later, Mr. Duško Panić, his *ex officio* defence counsel who replaced Mr. Dragan Lazić ---- were acting in collusion with the Republika Srpska, the Chamber finds that the applicant has not supported his claims and that, there is no evidence before the Chamber which would indicate that the criminal proceedings against the applicant were not fair. Additionally, the Chamber recalls that representatives from the OHR, the UN Civil Affairs, and the IPTF monitored the trial, and made no interventions during or after the trial related to the fairness of the overall proceedings, nor is there any evidence from the record before the Chamber that there were any irregularities of any significance. Therefore, the Chamber finds that there has been no violation of Article 6 of the Convention.

VIII. REMEDIES

114. The Chamber has established that the Republika Srpska violated the right of the applicant to liberty under Article 5 of the Convention. According to Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the Republika Srpska to remedy the established breach. In this connection the Chamber shall consider, *inter alia,* issuing orders to cease, desist and monetary relief (including pecuniary and non-pecuniary damages) and provisional measures.

115. The Chamber notes that the violation was constituted by the fact that no opinion of the ICTY was obtained prior to the applicant's arrest as required by the Rules of the Road, this rendering the applicant's detention unlawful from the period of 18 October 1996 to 9 May 1997, the date the ICTY gave a positive opinion in the case. The Chamber notes that the First Instance Court in Modriča, when deciding upon the applicant's sentence, took into account the time he had spent in detention as of 22 October 1996. Therefore, the Chamber is of the opinion that the finding of a violation of the applicant's right to liberty is an appropriate remedy for the harm suffered by him. In making this conclusion, the Chamber also recalls case nos. CH/98/1335, *Rizvić*; CH/99/1505, *Šabanćević;* and CH/99/2805 *Sefić;* decision on the merits of 5 March 2002, Decisions January -- June 2002; and case no. CH/98/1324 *Hrvačević v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 8 February 2002, Decisions January -- June 2002, where the Chamber declined to issue remedial orders for the same reason.

IX. CONCLUSIONS

116. For the above reasons, the Chamber decides,

1. by 10 votes to 4, to declare the application inadmissible under Article 3 of the European Convention on Human Rights insofar as the applicant complains of maltreatment while in police custody;

2. by 12 votes to 2, to declare the application inadmissible under Article 2 of Protocol No. 4 to the European Convention on Human Rights;

3. by 10 votes to 4, to declare the application admissible under Article 6 of the European Convention on Human Rights;

4. by 12 votes to 2, to declare the application admissible under Article 5 of the European Convention on Human Rights;

5. by 12 votes to 2, that the right of the applicant to liberty within the meaning of Article 5 paragraph 1(c) of the European Convention on Human Rights has been violated, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

6. by 11 votes to 3, that there has been no violation of Article 6 of the European Convention on Human Rights; and

7. by 11 votes to 3, that the present decision constitutes in itself a sufficient remedy for the harm suffered by the applicant.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex: Partly dissenting opinion of Mr. Giovanni Grasso, joined by Mr. Manfred Nowak

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Giovanni Grasso, joined by Mr. Manfred Nowak.

PARTLY DISSENTING OPINION OF MR. GIOVANNI GRASSO, JOINED BY MR. MANFRED NOWAK

1. I cannot agree with conclusion no. 1 of the decision, which declares inadmissible the applicant's complaint under Article 3 of the European Convention on Human Rights (the "Convention"). In my opinion, the Chamber should not have declared inadmissible under the six-month rule the complaint related to the alleged violation of Article 3 of the Convention, but rather, it should have found a violation of the positive obligation arising for the Parties from Article 3 of the Convention, in conjunction with Article 1 of the Convention and Article I of the Human Rights Agreement.

2. As to the issue of admissibility, I believe that the six-month rule may not be applied in this case, taking into account the following factors:

) The contacts between the applicant and the Chamber were, according to the applicant, prevented by the prison authorities of the Republika Srpska; that was in fact the reason why the Chamber granted the review requested by the applicant against the decision to strike out adopted by the Chamber.
) The application was lodged by the applicant's son on behalf of the applicant; we do not know whether and how the applicant, during his detention, could contact his son. In any case, it is likely that the applicant's detention (which started on 18 October 1996) prevented him from having an exact knowledge of the contents of the Human Rights Agreement.
) The Chamber did not apply, in the first period of its existence, the six-month rule in a very strict and formalistic way; accordingly, in this very old case, the Chamber should not have made use of the rule, taking into account the circumstances indicated in subparagraphs (a) and (b) above.

3. As to the merits, the Chamber, in my opinion, should have found a violation of Article 3 of the Convention. According to the case-law of the European Court of Human Rights, "where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in … ŠtheĆ Convention', requires by implication that there should be an effective official investigation" (Eur. Court HR, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, paragraph 102, Reports of Judgments and Decisions 1998-VIII). The European Court has underlined the fundamental value of these conclusions: "If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity" (*id.*).

4. In the specific case at issue, the applicant has presented on at least two occasions an "arguable claim" that he was ill-treated in the police station in Doboj on the first day after his arrest: before the investigative judge of the First Instance Court in Modriča on 5 February 1997 (see paragraph 45 of the decision) and before the First Instance Court in Modriča on 21 April 1997 during the main trial (see the minutes of the hearing). There is no evidence whatsoever that the respondent Party undertook any step to investigate the claim of the applicant, in breach of the positive obligation arising from Article 3 of the Convention, in conjunction with Article 1 of the Convention and Article I of the Human Rights Agreement.

(signed)
Giovanni GRASSO

(signed)
Manfred NOWAK