DECISION ON ADMISSIBILITY AND MERITS

(delivered on 7 November 2003)

Case no. CH/00/3574

Dušanka TASOVAC

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

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

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

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

I. INTRODUCTION

1. The case concerns the applicant's attempts to repossess her apartment, from which she was evicted on 24 January 2000 by the Canton Sarajevo Administration for Housing Affairs. The eviction was conducted without the applicant having received any procedural decision in that regard. The applicant also seeks to have the domestic authorities recognise her ownership over the apartment, because she alleges that she purchased it in 1992 from the former Yugoslav National Army ("JNA") in accordance with the Law on Securing Housing for the former JNA.

2. The application raises issues under Articles 6 and 8 of the European Convention on Human Rights (hereinafter: the "Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received and registered on 26 January 2000. The applicant is represented by Mr. Jakša Mitrović, a lawyer from Sarajevo.

4. On 11 February 2000, the Chamber considered the application and rejected the request for provisional measures and decided to transmit the case to the respondent Party, the Federation of BiH, for its observations on the admissibility and merits of the application.

5. On 16 February 2000, the application was transmitted to the Federation of BiH for its observations on the admissibility and merits of the application under Articles 6 and 8 of the Convention, and Article 1 of Protocol No. 1 to the Convention.

6. On 15 March 2000, the Federation of BiH submitted its observations on the admissibility and merits, which were forwarded to the applicant. On 4 May 2000, the Chamber received the observations from the applicant's representative.

7. On 17 June 2002, 7 March 2003, 20 May 2003, 27 May 2003, 18 July 2003 and 24 October 2003, the Federation of BiH submitted additional information. The applicant's representative submitted his observations on the additional information on 9 August 2002, 20 January 2003, 7 April 2003 and 16 June 2003.

8. The Chamber deliberated on the admissibility and merits of the application on 11 February 2000, 5 June 2003, 2 and 3 September 2003, and 9 October 2003, and adopted the present decision on the latter date. After the adoption of the decision, the Chamber has received correspondence from both parties, which was not taken into account due to its late submission.

III. ESTABLISHMENT OF THE FACTS

9. The facts of the case as they appear from the submissions of the applicant and the respondent Party are not specifically in dispute, unless otherwise stated, and may be summarised as follows.

10. The applicant is the pre-war occupancy right holder over an apartment located at Zelenih Beretki no. 5/1 in Sarajevo, the Federation of Bosnia and Herzegovina. The applicant moved into the apartment on 28 April 1987. The allocation right holder over the apartment was the then JNA.

11. In 1992, the applicant initiated proceedings to purchase the apartment and paid what she claims to have been the purchase price on 17 January 1992. It is disputed, however, whether the applicant paid the determined purchase price, or some other amount. The applicant submitted evidence of having paid 80,000.00 Yugoslav Dinars ("YUD") and the payment slip noted that this was 90% of the outstanding debt on the purchase of the apartment. The applicant also submitted an undated document entitled "notice on the conditions to purchase the apartment", issued on the

basis of her request to purchase the apartment of 4 March 1992. This document determined that the applicant was to pay 46,301.25 YUD for the apartment in question.

12. On 24 March 1995, the applicant entered into a sub-tenancy contract with I.J. This contract provided that the sub-tenant had the right to use one room of the two-room apartment, and the applicant kept the other room for her own use. The kitchen and other common areas would be used by both the applicant and the sub-tenant. The sub-tenant was to pay 4,000 German Marks (DEM) in advance for the use of the apartment. The contract states that the period of use starts on 24 March 1995 and lasts for a period of five years, or until 24 March 2000. The signatures of both the contracting parties were verified by the Municipal Court I in Sarajevo on 30 March 1995.

13. On 11 April 1995, the applicant claims to have obtained the permission of the then Secretariat for Defence, Centar Municipality, to leave Sarajevo. The applicant did not provide evidence of this. On an unknown date after that, the applicant left her apartment. The applicant's son had been moved to Canada due to a serious illness, and the applicant went to care for him. The applicant's son later died on 8 May 1999.

14. On 19 April 1995, the applicant initiated proceedings before the Municipal Court I in Sarajevo (hereinafter: "the Municipal Court") to establish her ownership over the apartment in question.

15. The applicant states that both she and her daughter every year stayed for over a month in the apartment during the period that I.J. rented the apartment.

16. On 7 February 1996, the sub-tenant I.J. submitted a request to the Republic of Bosnia and Herzegovina Army (hereinafter: "RBiH Army") regarding the allocation of an abandoned apartment. The request is of a general nature and does not specify the allocation of any specific apartment. The respondent Party states that his request to be allocated an apartment was denied.

17. On 24 May 1996, the RBiH Army declared the apartment permanently abandoned in accordance with the then Law on Abandoned Apartments. The procedural decision notes that the applicant abandoned the apartment on 3 May 1995. The applicant states that she did not receive the procedural decision at the time the apartment was declared abandoned, and the respondent Party does not dispute this.

18. On 17 May 1995, the Municipal Court issued a procedural decision stating that the proceedings in this legal matter were suspended in accordance with the Decree with force of law amending the Law on the Resources and Financing of the RBiH Army (see paragraph 40 below).

19. On 1 December 1999, the applicant obtained all documentation regarding the purchase of her apartment from the Office of the Ministry of Defence in Bijelina, the Republika Srpska[1]. This is stated in a letter of 3 December 2001 addressed to the Municipal Court by the Ministry of Defence of the Republika Srpska.

20. At the end of 1999, the sub-tenant I.J. informed the applicant that he had received notice that he would be evicted from the apartment. The applicant returned to the apartment in the beginning of December 1999.

21. According to the procedural decision dated 20 December 1999, issued by the Canton Sarajevo Administration for Housing Affairs, "I.J. and others" were found to be illegally using the apartment and ordered to leave the apartment within three days of receipt of the procedural decision. The procedural decision was issued on the basis on Article 30 of the Law on Housing Relations (see paragraph 66 below). The procedural decision noted that I.J. and his family use the apartment based on a contract dated 24 March 1995 with Dušanka Tasovac, but have no valid legal decision authorising their use of the apartment. The decision also notes that I.J.'s pre-war home in Sarajevo is destroyed, but that he owns several business premises which means that he can afford to repair his own house.

[1] At the time the former JNA left Sarajevo, all files and documentation related to JNA apartments were transferred to the Ministry of Defence in the Republika Srpska.

22. On 24 January 2000, the Federation Ombudsmen's Office in Sarajevo wrote an urgent letter to the Canton Sarajevo Ministry for Housing Affairs regarding the threatened eviction of I.J. The letter warned that any eviction proceedings carried out against Dušanka Tasovac would be entirely illegal, as she has not received any decision in that regard.

23. The applicant and the sub-tenant I.J. were evicted on 24 January 2000. The minutes taken at the time of the eviction show that representatives from the Canton Sarajevo Administration for Housing Affairs conducted the eviction, and representatives from the police department of Municipality Stari Grad and the International Police Task Force were also present. It is noted in the minutes that the sub-tenant I.J. and the occupancy right holder, Dušanka Tasovac, left the apartment.

24. On 16 February 2000, the Federation Ministry of Defence issued a procedural decision allocating the apartment in question to an officer from the Federation Ministry of Defence, N.Z.

25. The Federation Ministry of Defence took minutes on the taking of the apartment from the Canton Sarajevo Administration for Housing Affairs on 28 February 2000 for the purpose of further allocating the apartment by the Commission for Allocation of Apartments.

26. On 1 March 2000, the Federation Ministry of Defence issued a contract on use of the apartment with N.Z. named as the new occupancy right holder.

27. On 2 March 2000, N.Z. purchased the apartment from the Federation Ministry of Defence.

28. On 23 October 2000, N.Z. was registered as owner over the apartment in the land registry books of the Municipal Court I in Sarajevo.

29. On 21 November 2001, the Federation Ministry of Defence issued a "confirmation" affirming that N.Z. had to leave the apartment located at Ismeta Mujezinovića 24/V in Sarajevo that he or she had been temporarily allocated in order to allow the pre-war occupancy right holder to return. The pre-war occupancy right holder of that apartment repossessed the apartment on 21 July 2000.

30. On 28 June 2002, the Municipal Court issued a judgment rejecting the applicant's ownership claim initiated before the court on 19 April 1995 (see paragraphs 14 and 18 above) and ordering the applicant to pay the procedural costs of the proceedings. In its decision, the judge noted that the proceedings had been suspended in the case in 1995 and were reinitiated on 5 February 2001, as per the submission of the applicant's representative. The judge reviewed all of the submitted evidence regarding the purchase of the apartment and determined that the applicant had not concluded a contract on purchase. The judge recalled Article 9, paragraph 2, of the Law on the Transfer of Real Estate which states that a written contract on purchase, verified by the court, is required to transfer the ownership of real estate (see paragraph 41 below). The judge noted that the applicant had not submitted a written contract on purchase. The judge also noted that the applicant had paid a sum of 80,000 YUD on 17 February 1992, while the "notice on conditions to purchase the apartment" noted that she had submitted the request to purchase the apartment on 4 March 1992, and the same document also noted that she was obliged to pay 46,301.25 YUD, which is at odds with the fact that she had earlier paid 80,000 YUD. The judge concluded that it could not be determined from the evidence reviewed that the applicant had purchased the apartment in question, and thus, her claim to be registered as the owner over the apartment in question was rejected in its entirety.

31. The applicant appealed the decision of 28 June 2002 on 8 August 2002 to the Cantonal Court in Sarajevo. The applicant submitted that the judge had incorrectly applied the law, specifically, that the Law on Securing Housing for the Yugoslav National Army is the correct law to be applied as *lex specialis* in this particular case, and not the Law on the Transfer of Real Estate. The applicant further asserts that the "notice on conditions to purchase the apartment" constitutes an "offer" in the sense of Article 38 of the Law on Contractual Obligations, and paying the purchase price constitutes the "acceptance" in the sense of Article 39 of the same law (see paragraph 62 below).

Therefore, on the date of payment of the purchase price, 17 February 1992, the applicant became the owner over her apartment.

32. On 29 November 2002, the Cantonal Court issued its judgment, rejecting the applicant's appeal and confirming the first instance decision. The Court held that the court of first instance had correctly applied Article 9, paragraph 2 of the Law on the Transfer of Real Estate (see paragraph 41 below), and that the applicant had not submitted adequate evidence of having purchased the apartment. As to the applicant's appeal grounded on Articles 38 and 39 of the Law on Contractual Obligations, the Court noted that these provisions require the offer and acceptance to contain the same form, and as this is not the case, these articles are not applicable to the fact at hand. As to the alleged violation of Article 1 of Protocol No. 1 to the Convention, the Court held that the applicant could not allege that she had obtained a protected possession as she had failed to seek the repossession of the apartment within the time limit set forth in the law.

33. On 12 December 2002, the "Commission for control of contracts on use of apartments issued or renewed after 1 April 1992" issued a decision, in accordance with Point 10 of the Decision on Instruction on Procedure of Review of Concluded and/or Revalidated Contracts on Use of Apartments (see paragraph 60 below), stating that the contract on use concluded on 1 March 2000 between the Federation Ministry of Defence and N.Z. was issued in accordance with the law.

IV. DOMESTIC LEGAL FRAMEWORK

A. Relevant legislation of the Socialist Federal Republic of Yugoslavia

1. Law on Securing Housing for the Yugoslav National Army

34. The applicant initiated the proceedings to purchase the apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia — hereinafter —"OG SFRJ" no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the JNA.

B. Relevant legislation of the Socialist Republic of Bosnia and Herzegovina and after 11 April 1992, following independence, the Republic of Bosnia and Herzegovina

1. Law on Abandoned Apartments

35. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina — hereinafter— "OG RBiH" nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). The Parliament of the Republic of Bosnia and Herzegovina approved this Decree on 17 June 1994 and renamed the Decree the "Law on Abandoned Apartments". The Law governed the declaration of abandonment of certain categories of socially owned apartments and their re-allocation.

36. Article 2 set forth that apartments were to be considered abandoned if the pre-war occupancy right holder and his family members left the apartment, even if temporarily. If the pre-war occupancy right holder failed to resume using the apartment within the applicable time limit laid down in Article 3 (*i.e.* before 6 January 1996), he or she was regarded as having abandoned the apartment permanently. However, there were certain exceptions provided for in the amended Article 3 where an apartment was not to be considered abandoned, for example, if the holder of the occupancy right, or a member of his or her household, within the terms stated in a formal approval of a stay abroad or in another place within the country, had left the apartment due to having been sent by a medical institution for the purpose of receiving medical treatment.

37. Article 6, as amended, provided that a decision declaring an apartment abandoned shall be delivered promptly to the parties in the proceedings, to the holder of the right to dispose of the apartment, and to the allocation right holder of the apartment.

38. Article 7, paragraph 1, provided that apartments where a decision on abandonment was issued could be allocated for temporary use to active members in the conflict, and to persons who were left without a home due to the conflict. Paragraphs 2 and 3, as amended, provided that JNA abandoned apartments could be allocated to members of the RBiH Army and family members of soldiers killed in action.

39. According to Article 10, as amended, the failure to resume using the apartment within the time limit was to result in the deprivation of the occupancy right. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority.

2. Decree amending the Law on the Resources and Financing of the Republic of Bosnia and Herzegovina Army

40. On 3 February 1995, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on the Resources and Financing of the RBiH Army (OG RBiH no. 5/95). This Decree provided that for the protection of the housing fund of the army, until the issuing of the Law on Housing in the Republic of Bosnia and Herzegovina, courts and other state authorities should adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree came into force on 10 February 1995, the date of its publication in the Official Gazette.

3. Law on the Transfer of Real Estate

41. Article 9 of the Law on the Transfer of Real Estate (Official Gazette of the Socialist Republic of Bosnia and Herzegovina— hereinafter— "OG SRBiH" nos. 38/78, 4/89, 29/90 and 22/91; OG RBiH nos. 21/92, 3/93, 17/93, 13/94, 18/94 and 33/94) states that a contract on the transfer of real estate must be made in written form and the signatures must be verified by the competent court.

C. Relevant Legislation of the Federation of Bosnia and Herzegovina

1. The Law on Cessation of the Application of the Law on Abandoned Apartments

42. The Law on Cessation of the Application of the Law on Abandoned Apartments ("the Law on Cessation") entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina–hereinafter– "OG FBiH" nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01, 15/02 and 29/03). The Law on Cessation repealed the former Law on Abandoned Apartments.

43. According to the Law on Cessation, the competent authorities may make no further decisions declaring apartments abandoned (Article 1, paragraph 2). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the Law on Abandoned Apartments are null and void (Article 2, paragraph 1). Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the Law on Cessation (Article 2, paragraph 2).

44. All occupancy rights or contracts on use made between 1 April 1992 and 7 February 1998 were cancelled (Article 2, paragraph 3). A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered a temporary user (Article 2, paragraph 3).

45. The occupancy right holder of an apartment declared abandoned, or a member of his/her household, has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Article 3, paragraphs 1 and 2). Persons using the apartment without any legal basis should be evicted immediately or at least within 15 days, and the competent authority is not obliged to provide alternative accommodation to such persons (Article 3, paragraph 3).

46. According to Article 4, paragraph 1, the pre-war occupancy right holder over an apartment or a member of his or her household shall be entitled to claim repossession of the apartment.

47. Article 5, paragraphs 1-3, as amended, provides as follows:

> "A claim for repossession of the apartment must be filed within fifteen months from the date of entry into force of this Law[2].
>
> Exceptionally, the deadline for submission of claims for repossession of apartments under Article 2, paragraph 5 and Article 18b paragraph 1 of this Law, and Article 83a para. 4 of the Law on Amendments to the Law on Taking Over of the Law on Housing Relations (Official Gazettte of FBiH no. 19/99) shall be October 4, 1999.
>
> If the occupancy right holder does not file a claim to the competent administrative authority, to a competent court, or to the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "CRPC"), within the appropriate time limit, or a request for enforcement of a decision of the CRPC within the deadline specified in the Law on Implementation of the Decisions of the CRPC (FBiH OG 43/99, 5/00) the occupancy right is cancelled."

48. Article 18b, paragraph 1, establishes that the provisions of the Law on Cessation shall apply to the apartments that have not been declared abandoned, provided that the occupancy right holder lost possession of the apartment in question before 4 April 1998.

49. Article 18d, paragraph 6, sets forth that for apartments where an occupancy right was cancelled or the claim rejected, and the temporary occupant does not have the right to a new contract on use, the apartment will be managed by the administrative body in charge of housing issues.

> "Exceptionally, in respect of apartments at the disposal of the Ministry of Defence, where an occupancy right to an apartment is cancelled in accordance with Article 5[3] or Article 12[4], or where the claim is finally rejected in accordance with this Law, the competent body of the Ministry of Defence may issue a new contract on use to a temporary user of an apartment in cases where she or he is required to vacate the apartment under this Law to enable the return of a pre-war occupancy right holder or purchaser of the apartment, provided that her or his housing needs are not otherwise met."

2. Instruction on Application of the Law on Cessation of the Application of the Law on Abandoned Apartments ("the Instruction on the Law on Cessation")

50. The Instruction on the Law on Cessation (OG FBiH nos. 11/98, 38/98, 12/99, 27/99, 43/99 and 56/01) provides further clarification on the management of abandoned military apartments. In essence, these provisions obligate the Ministry of Defence to house persons entitled to alternative accommodation (and who should be evicted from another military apartment to allow the pre-war occupancy right holder to repossess the apartment) in an unclaimed military apartment at their disposal.

51. Point 23 reads:

> "The rules and procedures in this Law and this Instruction concerning management of abandoned apartments not claimed in accordance with the applicable deadline shall also apply to apartments at the disposal of the Federation Ministry of Defence, subject to the following variations as explained in paragraph 24 of this Instruction."

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[2] That is to say before 4 July 1999.

[3] If the pre-war occupancy right holder failed to file a request for repossession of his or her pre-war apartment before 4 July 1999.

[4] If the pre-war occupancy right holder over an apartment failed to file a request for eviction of the current occupant of the apartment within 30 days after the deadline for the vacation of the apartment had expired.

52. Point 24, paragraph ii, reads:

> "In other cases, the responsible military housing body may issue a new contract on use of an apartment which is unclaimed or for which a claim is finally rejected to a temporary user who is currently occupying an apartment at the disposal of the Ministry of Defence, who is required to vacate that apartment pursuant to the provisions of this Law to enable the return of a pre-war occupancy right holder or purchaser of the apartment, provided that his or her housing needs are not otherwise met, as explained by the Law and this Instruction."

3. The Law on Sale of Apartments with an Occupancy Right

53. Article 8a, as amended, of the Law on Sale of Apartments with an Occupancy Right (OG FBiH nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01 and 15/02) reads:

> "An occupancy right holder over an apartment that was declared abandoned in accordance with the Law on Abandoned Apartments and other regulations that define the issue of abandoned apartments, or an occupancy right holder that left the apartment in the period between 30 April 1991 and 4 April 1998[5], in case when the apartment has not been officially declared abandoned, is entitled to purchase that apartment in accordance with conditions set forth in this Law immediately after repossessing the apartment, or at the latest one year after repossession of the apartment, or within one year after this provision has been published in the Official Gazette of the Federation of BiH, depending on which date is later".

54. Article 27 provides that the ownership right to an apartment shall be acquired upon registration of that right in the land books.

55. Article 39 reads, in relevant part:

> "The occupancy right holders who previously concluded a contract on purchase of an apartment in accordance with the Law on Securing Housing for JNA … shall have the amount they paid, expressed in German Marks ("DEM") according to the applicable exchange rate on the day of purchase, recognised when the new contract on purchase of the apartment is concluded in accordance with this Law."

56. Article 39a provides that a person who entered into a contract to purchase an apartment from the JNA (Federal Secretariat for National Defence), who holds the occupancy right over said apartment, and is legally using the apartment, shall be registered as that apartment's owner with the competent court by an order of the relevant housing authority within the Federation Ministry of Defence. Article 39c states that Article 39a shall also apply to an occupancy right holder who has "exercised the right to repossess the apartment under the Law on Cessation of the Application of the Law on Abandoned Apartments."

57. Article 39d states that if an individual fails to realise his or her rights in connection with the apartment with the Federation Ministry of Defence, as provided for in this Law, the individual may initiate proceedings before the competent court.

4. Instruction on the Implementation of Articles 39a, 39b and 39c of the Law on Sale of Apartments with Occupancy Right

58. The Instruction on the Implementation of Articles 39a, 39b, and 39c of the Law on Sale of Apartments with an Occupancy Right (OG FBiH no. 6/00) states that the Ministry of Defence shall issue an order for registration of the ownership right over the apartment on the request of the occupancy right holder, or a member of his or her family household, who realised the right to repossess the apartment in accordance with the Law on Cessation, and who had previously

[5] The Law on Cessation entered into force on 4 April 1998.

concluded a legally binding contract on purchase of the apartment from the JNA (Federal Secretariat for National Defence) Housing Fund before 6 April 1992.

59. Point 6 reads, in relevant part:

> "In cases when an occupancy right holder has a receipt confirming that he paid a certain amount on the seller's account, but he does not have a contract on purchase which would show the total price of the apartment, the Ministry [of Defence] shall, based on the request by the occupancy right holder, conclude a new contract on purchase of the apartment and shall subtract from the newly established purchase price the previous sum paid."

5. Decision on Instruction on Procedure of Review of Concluded and/or Revalidated Contracts on Use of Apartments

60. The Decision on Instruction on Procedure of Review of Concluded and/or Revalidated Contracts on use of Apartments (OG FBiH 19/02) established commissions to review all new and/or revalidated contracts on use. Point 5 ordered the Federation Ministry of Defence to establish a commission exclusively to review new and/or revalidated contracts on use of apartments at the disposal of the Ministry of Defence. Point 10 provides that the Commission shall issue a decision establishing whether the new or revalidated contract was issued in accordance with the existing legal framework at the time of its issuance and deliver the decision to the relevant housing organ of the Federation Ministry of Defence.

6. Law on Civil Procedure

61. Article 199 of the Law on Civil Procedure (OG FBiH no. 42/98 and 3/99), paragraph 3, sets forth that any suspended proceedings shall only be resumed upon the proposal of one of the parties, when the reasons for the suspension of the proceedings have ceased.

7. Law on Contractual Obligations

62. Article 38 of the Law on Contratual Obligations, paragraphs 1 and 2 (OG SFRY nos. 29/78, 45/89 and 57/89; OG RBiH nos. 2/92, 13/93 and 13/94) states that "an offer to conclude a contract for which the law requires a certain form is legally binding only if it has been executed in that form" and the same applies for the acceptance of the offer. Article 39, paragraph 1, holds that, "the offer is accepted when the offeree has received the statement of acceptance from the acceptee".

8. Law on Administrative Procedure

63. The Law on General Administrative Procedure (OG SFRY no. 47/86 (consolidated text) became law in the Republic of Bosnia and Herzegovina on 11 April 1992 pursuant to the Decree with force of law on taking over the Law on General Administrative Procedure in the Republic of Bosnia and Herzegovina (OG RBiH nos. 2/92, 9/92, 16/92, and 13/94). Later this Law was replaced in the Federation of Bosnia and Herzegovina by the new Law on Administrative Procedure (OG FBiH nos. 2/98 and 48/99), which entered into force on 28 January 1998.

64. Article 8 of the Law on Administrative Procedure of the Federation of BiH describes "the principle of hearing a party", as follows:

> "(1) Before making a decision, a party shall be given an opportunity to express his opinion on all facts and circumstances important for making the decision.
>
> "(2) A decision may be made without first giving an opinion only in cases when it is allowed by the law."

65. Article 54 provides for the appointment of a temporary representative, in pertinent part, as follows:

> "(1) If a process-wise incapable party does not have a legal representative or if an action is to be taken against a person whose place of residence is unknown and who does not have a proxy, the authority conducting the procedure will appoint a temporary representative for such a party, if so required by the urgency of the case and the procedure must be conducted. The authority conducting the procedure will immediately inform the custodial authority accordingly, and if a temporary representative is appointed for a person whose place of residence is unknown, it will display its conclusion upon a notice board or in some other usual manner. "

9. Law on Housing Relations

66. Paragraph 2 of Article 30 of the Law on Housing Relations (OG SRBiH nos. 14/84, 12/87 and 36/89; OG RBiH no. 2/93; OG FBiH nos. 11/98, 38/98 and 19/99) provides that the housing organs, shall, *ex officio*, or on the request of an interested party, issue a procedural decision ordering the vacation of the apartment or premises if not more than three years has passed from the day of the illegal entry until the day the proceedings against the illegal entry has been initiated. Paragraph 4 states that persons who are evicted shall not be offered emergency accommodation.

67. Article 48 provides that an occupancy right holder may not lose their occupancy right if they do not use the apartment for more than six months but not longer than five years for, among other reasons, if they leave the country to receive medical treatment. In that case, the occupancy right holder may rent out all or a part of their apartment, provided that they first allow the allocation right holder to find a sub-tenant, and if the allocation right holder does not do this within 30 days of receiving the offer.

V. COMPLAINTS

68. The applicant alleges a violation of her right to the peaceful enjoyment of her possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention. The applicant asserts that the conduct of the organs of the Federation of Bosnia and Herzegovina has not been in accordance with the relevant domestic legislation and has prevented her from using her property. The application also raises issues under the right to protection of one's home under Article 8 of the Convention and the right to access to the court under Article 6 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

69. In its written observations on the admissibility and merits received on 15 March 2000, the Federation of BiH asserts that the application is inadmissible on the grounds of non-exhaustion of domestic remedies as the applicant did not submit a repossession request for the apartment in question. As to a potential violation of Article 6 of the Convention, the respondent Party asserts that she did not avail herself of any domestic remedies, neither before the administrative organs nor the judicial organs; therefore, the Federation of BiH is not in violation of Article 6 of the Convention. As to the alleged violation of Article 8 of the Convention, the Federation of BiH asserts that the apartment is not her "home", as she ceased using it as such on 11 April 1995, and she never filed a claim for repossession, which indicates that she did not consider it her home. As to a violation of Article 1 of Protocol No. 1 to the Convention, the Federation of BiH asserts that because the applicant abandoned the apartment, and did not seek to repossess it, the organs of the Federation have not interfered with her rights within the meaning of Article 1 of Protocol No. 1 to the Convention. In fact, the Federation of BiH enacted all laws necessary to allow the applicant to repossess her apartment, and the applicant simply failed to make use of the remedies offered.

70. In its submission received on 17 June 2002, the Federation of BiH included information obtained from the Federation Ministry of Defence of 28 March 2000. Namely, the Federation

Ministry of Defence stated that the applicant had never concluded a written contract on purchase of the apartment in question, nor submitted adequate evidence of having paid the purchase price. Therefore, the Federation of BiH asserts that the provisions in Articles 39a, 39b, and 39c of the Law on Sale of Apartments with an Occupancy Right cannot be applied in the applicant's case, as she has not requested the repossession of the apartment. The Federation Ministry of Defence also stated that the sub-tenant I.J. was an "illegal user" as before the war he lived in his family house in Sarajevo, which was not devastated, *e.g.* he was a multiple occupant in the sense of the provisions of the Law on Cessation. Also, the minutes taken at the time of the eviction indicated no objections on the part of Dušanka Tasovac. After the eviction, the Cantonal Administration for Housing Affairs handed over the apartment to representatives from the Federation Ministry of Defence for their further disposal, in accordance with the Law on Cessation.

71. In its submission received on 27 May 2003, the Federation of BiH asserts that I.J. had submitted a request to be allocated the apartment in question on 7 February 1996, as he was a member of the armed forces during the war. His request, however, was rejected, as he did not fulfil all of the conditions, namely, he possessed property in Sarajevo. As the applicant had not filed a claim to repossess the apartment in question on time, the applicant's occupancy right was cancelled in accordance with Article 5 of the Law on Cessation. Thus, in accordance with Article 18d of the Law on Cessation and Points 23 and 24 of the Instructions on the Law on Cessation, the Federation Ministry of Defence had the right to dispose of the apartment and allocated the apartment in question to a third person in a lawful manner. The Federation of BiH holds that N.Z., to whom the apartment was allocated, fulfilled all the conditions for such allocation. Specifically, prior to the war, N.Z. was a sub-tenant in the Republika Srpska, then during the war, as a member of the RBiH Army, N.Z. was allocated an apartment in Sarajevo, which N.Z. had to vacate to allow the pre-war occupancy right holder to return, and N.Z.'s housing needs are not otherwise met. The Commission for review of concluded/revalidated contracts on use established, in accordance with Point 5 of the "Instructions on the procedure of review of concluded and/or revalidated contracts on use of apartments", that the contract on use was issued in accordance with the then applicable laws.

72. As to the applicant's ownership over the apartment, the Federation of BiH points out that the domestic courts have ruled that the applicant did not purchase the apartment nor conclude a legally binding contract. In accordance with two documents which regulated the procedure to purchase a JNA apartment, the "Instructions on the purchase of apartment from the former JNA" and the "Methodology for determining the purchase price", the steps to be taken are as follows: first, submit a written request to purchase the apartment; second, pay the fee for the Commission to assess the purchase price of the apartment; third, the Commission makes the assessment; and finally, the issuance of an itemised balance sheet confirming the purhcase price of the apartment, which is later used in the written contract on purchase of the apartment. Without having undertaken any of these steps, the applicant paid 80,000 YUD on 12 February 1992.[6] This amount, according to the exchange rate at that time, amounted to 640 DEM. The Federation of BiH asserts that according to the then regulations, the applicant should have been assessed the purchase price of 304,682 YUD.

73. The Federation of BiH concludes that the applicant is not the owner of the apartment, and that she *ex lege* lost the occupancy right over the apartment as she failed to file a repossession claim in accordance with Article 5 of the Law on Cessation. The apartment has been validly allocated to a third person, who has legally purchased the apartment. The puchaser of the apartment is in a similar situation as the applicant Mina Salihagić, in case no. CH/00/5408 (decision of 11 May 2001, Decisions January-June 2001). For all of these reasons, the Federation of BiH concludes that application should be declared inadmissible.

B. The applicant

74. The applicant holds that she is the owner over the apartment in question and as such, she rented it out to the sub-tenant I.J. She was then illegally evicted from her apartment in January 2000. The applicant states that the eviction occurred without any appropriate administrative procedure. In this regard, the applicant points out that the procedural decision authorising the

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[6] The Chamber notes that the applicant paid the sum of 80,000 YUD on 17 February 1992, not 12 February 1992.

eviction of I.J. does not mention her, nor apply to her in any way. She never received the decision declaring the apartment abandoned and only found out that the apartment had been declared permanently abandoned at the time of eviction. Thus, she was not able to participate in the proceedings by which her apartment was declared abandoned, nor was a special representative appointed on her behalf. Nor did she know that she needed to submit a repossession claim for her apartment, as she did not know that it had been formally declared abandoned, nor did she consider herself to have abandoned it. Furthermore, the applicant holds that in accordance with Article 2, paragraph 1 of the Law on Cessation, the administrative act declaring the apartment abandoned is null and void, so the respondent Party invoked this act (the decision declaring the apartment abandoned) without any legal ground. In fact, the applicant asserts that if the apartment had been declared abandoned, the Federation Ministry of Defence should have allocated the apartment to a temporary user, in accordance with the Law on Cessation.

75. In a letter received on 9 August 2002, the applicant submits that she was not required to submit a request for repossession of her apartment as she was obliged to leave the apartment to care for her son, and she rented the apartment during that period to a sub-tenant.

76. In a letter received on 20 January 2003, the applicant states that her representative was orally informed by representatives of the Cantonal Administration for Housing Affairs Centar/Stari Grad Department in 1998, that, as her apartment had not been declared abandoned, she did not need to file a repossession claim. Rather, she would need to file a claim against the current occupant if she wished to return to the apartment. The applicant states that as she and the current occupant had a contractual agreement allowing her to return to her apartment at her will, she did not need to initiate court proceedings to return into possession of the apartment. Essentially, the applicant claims that she, through the contract with the sub-tenant, was “in possession” of the apartment continuously.

VII. OPINION OF THE CHAMBER

A. Admissibility

77. Before considering the case on the merits, the Chamber must first decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. Admissibility as to the applicant’s claim that she is the owner over the apartment

78. 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.

79. The Chamber notes that the applicant initiated proceedings before the Municipal Court in 1995 in order to establish her ownership over the apartment in question. The Municipal Court issued its decision on 28 June 2002 rejecting the applicant’s request to be recognised as the owner over the apartment. The applicant appealed this decision to the Cantonal Court. On 29 November 2002, the Cantonal Court issued its judgment rejecting the applicant’s appeal and confirming the decision of the Municipal Court of 28 June 2002. The domestic courts determined that the applicant was not the owner over the apartment because she had not entered into a written contract with the former JNA as required by Article 9 of the Law on the Transfer of Real Estate.

80. The Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, *e.g.* case no. CH/99/2565, *Banović,* decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999). The Chamber observes that the courts have issued unfavourable decisions for the applicant; however, there is no evidence that the courts failed to act fairly as required by Article 6 of the Convention or failed to protect any established ownership right to the apartment within the meaning of Article 1 of Protocol No. 1 to the Convention. It follows that the applicant’s complaint regarding her ownership over the apartment is manifestly ill-founded within the

meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

2. Admissibility as to the applicant's claim to repossess the apartment

81. According to Article VIII(2)(a) of the Agreement, the Chamber shall consider whether effective domestic remedies exist, and the applicant has demonstrated that they have been exhausted. As the Chamber has declared the application inadmissible insofar as the applicant claims to be the owner of the apartment in question, it will now examine whether the applicant should have made use of the remedies to regain possession of the apartment and to assert her occupancy right to the apartment.

82. The Federation of BiH objects to the admissibility of the application on the grounds that the applicant has not exhausted the available domestic remedies to repossess her apartment, specifically that she did not file a repossession claim for the apartment in question in accordance with Article 5 of the Law on Cessation. The Chamber interprets Article 5 of the Law on Cessation, in conjunction with Article 18d, as requiring that the pre-war occupancy right holder must file a claim to repossess the apartment if that pre-war occupancy right holder has *lost possession* of his or her apartment and/or his or her apartment is occupied by a temporary occupant. In the case at hand, the Chamber finds that the applicant was in continuous possession of the apartment, via the contract on sub-tenancy, whether that contract was concluded in accordance with the Law on Housing Relations or not. I.J. was occupying the apartment on the basis of a contract with the applicant; therefore, there was no need for the applicant to file a claim to repossess the apartment. Moreover, although there was no obstacle preventing the respondent Party from notifying the applicant that the apartment had been declared abandoned, no steps were taken to do so. Thus, the respondent Party acted to reinforce the applicant's conviction that she did not need to file a repossession claim. Therefore, the Chamber finds that the Federation of BiH has not indicated a remedy relevant to the applicant's case.

3. Conclusion as to admissibility

83. The Chamber concludes that the particular claim that the respondent Party violated the applicant's rights as owner of the apartment is inadmissible as manifestly ill-founded. The remainder of the application is admissible insofar as it alleges violations of the applicant's right to the peaceful enjoyment of the apartment as the occupancy right holder within the meaning of Article 1 of Protocol No. 1 to the Convention, the right to respect for her home, within the meaning of Article 8 of the Convention, and the right to access to a court as embodied in Article 6 of the Convention.

B. Merits

84. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms", including the rights and freedoms provided for in the treaties listed in the Appendix to the Agreement.

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

85. The applicant alleges a violation of the peaceful enjoyment of her possessions with regard to the use and enjoyment of the apartment which she claims to have purchased. As the Chamber has already declared inadmissible the applicant's ownership claim over the apartment, the Chamber will consider the applicant's occupancy right to the apartment as the applicant's possession, in accordance with the consistent case-law of the Chamber (see, *e.g.* case no. CH/96/28, *M.J.*, decision on the admissibility and merits of 7 November 1997, paragraph 32, Decisions March 1996— December 1997; case no. CH/97/46 *Kevešević,* decision on the merits of 15 July 1998, paragraph 73, Decisions and Reports 1998).

86. Article 1 of Protocol No. 1 to the Convention provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

87. Article 1 of Protocol No. 1 to the Convention thus contains three rules. The first rule enunciates the general principle that one has the protected right to the peaceful enjoyment of one's property. The second rule covers deprivation of property and subjects it to the requirements of the public interest and conditions laid out in law. The third rule recognises that States are entitled to control the use of property and subjects such control to the general interest and domestic law. It must then be determined in respect of these conditions whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's rights, bearing in mind that the last two rules should be construed in light of the general principle (see among other authorities, case no. CH/96/17 *Blentić,* decision on admissibility and merits of 5 November 1997, paragraphs 31-32, Decisions March 1996-December 1997). Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

a. Interference with the applicant's right to the peaceful enjoyment of her possessions

88. As the Chamber has already established that the applicant's occupancy right over her apartment is a possession within the meaning of Article 1 of Protocol No. 1 to the Convention, the Chamber must consider whether the respondent Party has interfered with the enjoyment of her occupancy right.

89. The Chamber observes that the interference with the applicant's occupancy right takes several forms. Firstly, the RBiH Army, whose legal successor is the Army of the Federation of BiH, declared the apartment permanently abandoned in May 1996 under the then Law on Abandoned Apartments. Secondly, the respondent Party asserts that the applicant, *ex lege*, lost her occupancy right to her apartment by not filing a repossession claim. Finally, the apartment was allocated to another user, who purchased the apartment.

90. It is accordingly necessary for the Chamber to examine whether this interference by the Federation of BiH is justified under Article 1 of Protocol No. 1 to the Convention as being "subject to conditions provided for by law" and "in the public interest."

b. Principle of lawfulness

91. Regardless of which of the three rules set forth in Article 1 of Protocol No. 1 is applied in a given case (*i.e.*, interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1 to the Convention.

i. Lawfulness of proceedings whereby applicant lost her occupancy right

92. The Chamber observes that the applicant first lost her occupancy right due to the issuance of the procedural decision of 24 May 1996 declaring her apartment permanently abandoned, a procedural decision issued in accordance with the then Law on Abandoned Apartments. In accordance with Article 6 of the then Law on Abandoned Apartments, the authorities were required to deliver the decision to the applicant (see paragraph 37 above). The Federation of BiH has submitted no evidence that the competent organ attempted to deliver the procedural decision to the applicant. It appears that no attempt was made to locate the applicant, despite the fact that the applicant's sub-tenant was living continuously in the apartment and the applicant herself had retained a room in the apartment for her use during her visits. Furthermore, the Chamber questions whether the

competent body correctly called upon the Law on Abandoned Apartments in declaring the apartment abandoned. In fact, as a sub-tenant was in the apartment, the RBiH Army (as owner of the apartment) should have relied on the provisions of the Law on Housing Relations related to sub-tenancy contracts if they wished to cancel the applicant's occupancy right. The Chamber concludes that the procedure by which the apartment was declared permanently abandoned was not in accordance with the law, as the applicant never received the procedural decision as required, and because the competent organs incorrectly relied on the Law on Abandoned Apartments when the apartment had not in fact been abandoned.

93. The respondent Party asserts that the applicant should have filed a claim to repossess her apartment in accordance with Article 5 of the Law on Cessation, and as she did not, she, *ex lege*, lost her occupancy right. However, the Chamber considers that the applicant can not be considered to fall into the category of occupancy right holders who were required to file a repossession claim for their socially-owned apartment. As stated above in paragraph 82, the applicant was in continuous possession of her apartment through the contract on sub-tenancy. She simply had not lost possession of her apartment, nor was there an illegal user in the apartment. In other words, none of the conditions which necessitated the filing of a repossession claim were present in the applicant's case. The authorities deliberately hid the fact from the applicant that she had "lost" her occupancy right until the time limit for filing repossession claims had passed. In conclusion, the Chamber finds that the respondent Party's argument that the applicant *ex lege* lost her occupancy right to the apartment is simply a misapplication of the Law on Cessation.

ii. Lawfulness of proceedings whereby applicant's apartment was allocated to a third party

94. The respondent Party asserts that the applicant's apartment was lawfully allocated to N.Z. through the contract on use concluded on 1 March 2000, as the applicant had *ex lege* lost her occupancy right. The Chamber recalls that Article 18d of the Law on Cessation allows the Ministry of Defence to dispose of an apartment only when the occupancy right is cancelled in accordance with Article 5 or Article 12 of the Law on Cessation, or where the claim is finally rejected. As the Chamber has found that the applicant did not lose her occupancy right in accordance with Article 5 of the Law on Cessation, the apartment was not at the disposal of the Ministry of Defence. Therefore, the contract on use issued to N.Z. was a misuse of the apartment and not "in accordance with the law." It follows that the contract on purchase concluded on 2 March 2000 between N.Z. and the Ministry of Defence can also not be considered to be "in accordance with the law," as the legal basis for the concluding the contract on purchase, the preceding contract on use, was not lawful.

iii. Conclusion as to lawfulnes of interference

95. The Chamber finds that the proceedings by which the apartment was declared abandoned in 1996, and all later attempts to *ex lege* deprive the applicant of her occupancy right, and the proceedings by which the apartment was allocated to another user, are not in accordance with the law. This determination is sufficient to find that there has been a violation under Article 1 of Protocol No. 1 to the Convention. It also dispenses the Chamber from having to consider whether the acts complained of were proportional to the aim sought. Accordingly, the Chamber decides that the Federation of BiH has violated the applicant's right to the enjoyment of her occupancy right over her apartment as guaranteed by Article 1 of Protocol No. 1 to the Convention.

2. Article 8 of the Convention

96. Although the applicant did not specifically complain of a violation of her right to respect for her home, as protected by Article 8 of the Convention, the Chamber raised this matter *proprio motu* when transmitting the application to the Federation of BiH. Article 8 of the Convention provides as follows,

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

97. The Chamber must first determine whether the applicant's apartment constitutes her "home" in the sense of Article 8 of the Convention. If so, the Chamber must determine whether the Federation of BiH has interfered with the applicant's right to respect for her home under Article 8 of the Convention. Finally, the Chamber must determine whether the interference of the Federation of BiH is justified. The Chamber recalls that the conditions upon which a respondent Party may interfere with the right to respect for one's home are set out in paragraph 2 of Article 8. The interference is only justified if it is: (a) "in accordance with the law"; (b) in the interest of one or more of the legitimate aims listed; and (c) "necessary in a democratic society". Therefore, a proper balance must be struck between the legitimate aim pursued and the means employed, taking into account the respondent Party's margin of appreciation.

98. The respondent Party alleges that the apartment in question is not the applicant's home, as she concluded a sub-contract on 11 April 1995 with I.J., and subsequently never submitted a repossession request for the apartment, which indicates that she did not consider the apartment her "home." Additionally, the Federation Ministry of Defence, in its letter submitted to the Chamber by the respondent Party on 9 September 2002, states that in question is a two-room apartment and doubts that that the sub-tenant and 4 other family members and the applicant could all be accommodated in it. However, as stated above, the contract on lease specifically provided for the applicant to continue using one room in the apartment, and the applicant states that she used the apartment on a regular basis. The Chamber has no reason to doubt the applicant's statement, and the size of the apartment is not necessarily indicative of whether the applicant did or did not regularly use her apartment and consider it her home. Furthermore, as discussed above in paragraph 93, the applicant did not file a claim to repossess the apartment due to the conduct of the authorities of the respondent Party, and not because she did not consider the apartment her home. The Chamber finds that the apartment in question was the applicant's home, and the eviction of the applicant on 24 January 2000 clearly constitutes an interference with the respect for her home within the meaning of Article 8 of the Convention.

99. Next, the Chamber must turn to the question of whether the interference was justified, that is to say whether it was in accordance with the law and in pursuit of one of the legitimate aims set forth in Article 8 of the Convention. As to the legality of the eviction, the Chamber recalls that no procedural decision was issued authorising the eviction of the applicant. Rather, the Canton Sarajevo Administration for Housing Affairs issued a decision in relation to the sub-tenant, but had no legal basis for evicting the applicant. The Chamber also notes that the minutes taken at the time of eviction identify the applicant as the occupancy right holder. The Chamber has also found that as the applicant did not need to file a repossession claim, she was the occupancy right holder at the time of the eviction. Therefore, the Chamber finds that the eviction of the applicant was not provided for by law within the meaning of Article 8 of the Convention. It also follows that the subsequent allocation of her apartment to N.Z. was not in accordance with the law. This finding is sufficient for the Chamber to find that there has been a violation under Article 8 of the Convention, and dispenses the Chamber from having to consider whether the acts complained of were proportional to the aim sought. Accordingly, the Chamber decides that the Federation of BiH has violated the applicant's right to the enjoyment of her home as guaranteed by Article 8 of the Convention.

3. Article 6 of the Convention (right to access to a court)

100. Although the applicant did not specifically allege a violation of her rights as guaranteed by Article 6 of the Convention, she generally complained of the manner in which the eviction proceedings against her were carried out. Accordingly, the Chamber raised this matter *propio motu* when transmitting the case to the Federation of BiH for its observations on the admissibility and merits. Paragraph 1 of Article 6 of the Convention states as follows:

> "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."

101. The Chamber must first consider whether an occupancy right concerns a "civil right" within the meaning of Article 6 of the Convention. The Chamber has previously held that a dispute relating to the existence of an occupancy right comes within the ambit of Article 6 of the Convention (see, *Keveševič, op. cit.)*. The Chamber therefore finds that the rights guaranteed in Article 6 of the Convention attach to the dispute regarding the applicant's occupancy right to the apartment, including her consequent eviction.

102. In *Golder v. United Kingdom*, the European Court recognised that "the right of access constitutes an element which is inherent in the right stated by Article 6 § 1" (Eur. Court HR, judgment of 21 February 1975, Series A no. 18, page 18, paragraph 36). The European Court elaborated:

> "It would be inconceivable, in the opinion of the Court, that Article 6 § 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings. …

103. However, the right of access to a court enshrined in Article 6 is not absolute; it may be subject to certain limitations since the right "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals" (Eur. Court HR, *Ashingdane v. United Kingdom*, Series A no. 93, page 24, paragraph 57). None the less, the limitations "must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired" (*id.*). "Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (*id.*).

104. The Chamber recalls that in accordance with Article 6 of the then Law on Abandoned Apartments, the authorities were required to deliver the decision on abandonment to the applicant (see paragraph 37 above). If the applicant's address was unknown, then the proceedings were to be conducted *in absentia*, with the appointment of a temporary representative, in accordance with the Law on Administrative Procedure, (see paragraph 65 above). In the present case, it appears that no attempt was made to locate the applicant, despite the fact that the applicant's sub-tenant was in the apartment, and the fact that the applicant made yearly visits to the apartment. Moreover, although the procedural decision declaring the apartment abandoned noted that it was to be delivered to an appointed "temporary representative *in absentia"*, the applicant states that no temporary representative *in absentia* was appointed on her behalf, and the respondent Party does not dispute this.

105. Additionally, after the apartment was declared abandoned, the apartment was not allocated to a temporary user, as provided for in the Law on Abandoned Apartments. Had this been done, the sub-tenant would have been evicted, and the applicant would then have been put on notice that the apartment had been declared abandoned. In that case, she could have filed a claim to repossess her apartment and otherwise taken all necessary steps to regain the possession of her apartment. However, the applicant states that she did not know that the apartment had been declared abandoned until the time of her eviction in 2000, at which point it was too late to file a repossession claim to the apartment in accordance with the Law on Cessation.

106. The Chamber recognises that in certain circumstances it may be reasonable and necessary for the domestic authorities to conduct proceedings *in absentia* of the interested party. In such circumstances, Article 54, paragraph 1 of the Law on Administrative Procedure provides for the appointment of a temporary representative of an interested party whose place of residence is unknown (see paragraph 65 above). However, as the European Court has said in *Colozza v. Italy*,

when the domestic law provides that the proceedings may be conducted *in absentia* of an interested party, "that person should, once he becomes aware of the proceedings, be able to obtain, from a court which has heard him, a fresh determination of the merits of the charge" (Eur. Court HR, judgment of 12 February 1985, Series A no. 89, page 15, paragraph 29).

107. In the present case, when the applicant finally discovered in January 2000 that the apartment had been declared abandoned in 1996, she was not given any opportunity to contest the decision or be heard before any administrative or judicial organ. Instead the applicant was evicted from her apartment, without having received any procedural decision authorising her eviction. In fact, the Canton Sarajevo Administration for Housing Affairs issued no decision regarding the eviction of the applicant, which effectively prevented her from contesting the eviction. The Chamber can only conclude that the organs of the respondent Party have acted in bad faith towards the applicant by not informing her that the apartment was declared abandoned, and not allocating the apartment to a temporary user, even after they had declared the apartment abandoned. Rather, the responsible organs of the Federation of BiH waited until after all deadlines to file a repossession claim had expired, and then initiated proceedings to evict the sub-tenant, effectively preventing the applicant from availing herself of any legal remedy to retain her occupancy right over her apartment and prevent her eviction.

108. In these circumstances, the Chamber considers that the Federation of BiH has failed to provide the applicant with access to a court for the determination of her occupancy right to the apartment and her right to not be evicted from the apartment. Therefore, the Chamber finds that the respondent Party has violated the applicant's right as guaranteed by paragraph 1 of Article 6 of the Convention.

VIII. REMEDIES

109. The Chamber has established that the Federation of BiH violated the right of the applicant to the peaceful enjoyment of her occupancy right under Article 1 of Protocol No. 1 to the Convention, her right to respect for her home, as protected by Article 8 of the Convention, and her right to access to the court as protected by Article 6 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 Federation of BiH to remedy the established breach. In this connection the Chamber shall consider, *inter alia,* issuing orders to cease and desist and monetary relief (including pecuniary and non-pecuniary damages).

110. With regard to the violation of the applicant's rights under Article 1 of Protocol No. 1 to the Convention, the Chamber considers it appropriate to ensure that the applicant's occupancy right is restored to her, and that she is reinstated into her apartment at Zelenih beretki no. 5/I without further delay and at the latest within one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

111. As to the present ownership of the apartment, the Chamber has found that the apartment in question was not lawfully at the disposal of the Federation Ministry of Defence, and that the contract on use of the apartment, and the subsequent contract on purchase of the apartment were unlawful and a misuse of the Federation Ministry of Defence's authority. Therefore, the Chamber considers it appropriate to order the respondent Party to take all necessary steps to declare null and void the contract on purchase of the apartment between N.Z. and the Federation Ministry of Defence without delay and at the latest within one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

112. With regard to the violation of the applicant's right to access to the court under Article 6 of the Convention, the Chamber finds that the orders related to restoring the applicant's occupancy right to her, and annulling the purchase contract between N.Z. and the Federation Ministry of Defence are also remedies which aim to correct the violation of Article 6 of the Convention.

113. Although the applicant has not specifically requested pecuniary or non-pecuniary compensation, the Chamber considers it appropriate to award a sum to the applicant in recognition

of the sense of injustice she has suffered through the course of the proceedings, in particular taking into account the unlawful eviction on 24 January 2000.

114. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 2,000 Convertible Marks (*Konvertibilnih Maraka*) in non-pecuniary damages in recognition of her suffering no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

115. The Chamber will further award simple interest at an annual rate of 10% on the sum awarded to the applicant in the preceding paragraph, or any unpaid portion thereof as from the date of expiry of the above one-month period until the date of settlement in full.

116. The Chamber will order the respondent Party to report to the Human Rights Commission within the Constitutional Court, no later than two months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken to comply with the above orders.

IX. CONCLUSION

117. For these reasons, the Chamber decides:

1. by 6 votes to 1, to declare the part of the application inadmissible which relates to the applicant's claim that she is the owner over the apartment in question based on the steps she took in 1992;

2. unanimously, that the remainder of the application is admissible;

3. unanimously, that the right of the applicant to the peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, that the right of the applicant to respect for her home within the meaning of Article 8 of the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that the right of the applicant of access to a court as guaranteed by Article 6 of the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to restore the applicant's occupancy right to her, and to ensure that the applicant is reinstated into her apartment located at Zelenih beretki 5/I without further delay, and at the latest within one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

7. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the contract on purchase concluded between N.Z. and the Ministry of Defence is declared null and void without further delay, and at the latest within one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding, the sum of 2,000 (two thousand) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damage;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of ten per cent (10%) on the sum specified above in conclusion no. 8, or any unpaid portion thereof as from the date of expiry of the above one-month period until the date of settlement in full; and,

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court, no later than two months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

Remedy: In accordance with Rule 63 of the Chamber's Rules of Procedure, as amended on 1 September 2003 and entered into force on 7 October 2003, a request for review against this decision to the plenary Chamber can be filed **within fifteen days** starting on the working day following that on which the Panel's reasoned decision was publicly delivered.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel