DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 November 2003)

Case no. CH/02/12470

Nedjeljko OBRADOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 10 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 aforementioned application introduced pursuant to Article VIII(1) of the Agreement on Human Rights ("Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

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

I. INTRODUCTION

1. The case concerns an applicant who was discharged of his duties as a high-ranking military officer of the Federation of BiH Army. The applicant complains that he never received a decision in this regard, and that he was not able to participate in the process. The applicant further complains of being prohibited by the Election Commission for Bosnia and Herzegovina (hereinafter: "Election Commission") from running in the General Elections in Bosnia and Herzegovina in October 2002, due to the discharge.

2. The case raises issues primarily under Article 3 of the First Protocol to the European Convention on Human Rights (hereinafter: "the Convention") (the right to free elections).

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 28 November 2002.

4. On 17 December 2002, the Chamber requested certain information from Bosnia and Herzegovina. On 31 December 2002, Bosnia and Herzegovina submitted its response.

5. On 14 January 2003, the application was transmitted to Bosnia and Herzegovina under Articles 6 and 13 of the Convention, Article 3 of the First Protocol to the Convention and Article 25 of the International Covenant on Civil and Political Rights (hereinafter: "ICCPR") in connection with Article II(2)b of the Agreement and to the Federation of BiH under Articles 6 and 13 of the Convention.

6. On 31 December 2002 and on 31 January 2003, Bosnia and Herzegovina requested the Chamber to regard letters from the Election Commission, dated 30 December 2002 and 24 January 2003, as its written observations on the admissibility and merits.

7. On 14 March 2003, the Chamber received the Federation of BiH's observations on admissibility and merits.

8. On 24 February 2003 and on 15 April 2003, the applicant submitted his responses.

9. The Chamber invited the Office of the High Representative (hereinafter: "OHR") and the Organization for Security and Co-operation in Europe (hereinafter: "OSCE") to participate in the proceedings as *amici curiae.* On 18 June 2003, OHR informed the Chamber that it will participate as *amicus curiae* in the proceedings, but the participation will be limited to giving OHR's interpretation of the relevant provisions of the Election Law. On 4 July 2003, OHR submitted its written *amicus curiae* opinion. On 19 June 2003, OSCE declined the invitation to act as *amicus curiae.*

10. On 19 June 2003, the Chamber received the Federation of BiH's additional information.

11. On 26 June 2003, the Stabilization Force (hereinafter: "SFOR"), in response to the Chamber's letter, submitted a letter clarifying some key issues.

12. On 3 July 2003, the Second Panel of the Chamber relinquished, pursuant to Rule 29(4) of the Chamber's Rules of Procedure, its jurisdiction over the application to the Plenary Chamber. On 4 July 2003, the application was discussed before the Plenary, at which time it was decided to hold a public hearing.

13. The Chamber invited OHR, OSCE and SFOR to act as *amici curiae* at the public hearing. On 30 July 2003, OHR informed the Chamber that it will not take part in the public hearing. On 31 July 2003, OSCE informed the Chamber that it will take participate as *amicus curiae* at the public hearing and submitted its brief on 20 August 2003. On 11 August 2003, SFOR declined the Chamber's invitation to participate as *amicus curiae* at the public hearing.

14. On 11 July 2003, the Chamber re-transmitted the case under the criminal sanction aspect of Article 6 of the Convention to both respondent Parties. On 8 August 2003, the Federation of BiH submitted its additional observations in this regard. On 1 September 2003, Bosnia and Herzegovina submitted its written observations in this regard.

15. On 11 August 2003, the applicant informed the Chamber that he will be represented by Mr. Petar Puljić, a lawyer practicing in Čaplijna, the Federation of BiH.

16. On 3 September 2003, the Chamber held a public hearing on the admissibility and merits of the application at the Cantonal Court in Sarajevo. The applicant was present in person and represented by his lawyer, Mr. Petar Puljić. The respondent Party Bosnia and Herzegovina was represented by Ms. Gordana Milovanović and Mr. Jusuf Halilagić, its Agents. Ms. Lidija Korać, as an expert represented the Election Commission. The respondent Party the Federation of BiH was represented by Ms. Safija Kulovac, Acting Secretary of the Office for Representation and Co-operation before the Human Rights Commission, Mr. Mirsad Gačanin, Legal Advisor to the Acting Secretary, and by Ms. Marija Ćelam, Senior Expert Advisor of the Federation of BiH Minister of Defence. The OSCE was represented by Mr. Paul Prettitore, Legal Advisor with the Human Rights Department.

17. In response to requests made at the public hearing, additional information was received from the applicant on 10 and 18 September 2003. Additional information from the Federation of BiH was received on 16 September 2003. The Chamber requested additional information from Bosnia and Herzegovina on 11 September 2003, however, Bosnia and Herzegovina refused to accept delivery of the Chamber's letter until 1 October 2003, and responded to the Chamber's request on 13 October 2003.

18. The Chamber deliberated on the admissibility and merits of the applications on 10 January, 5 June, 3 and 4 July, 3 September, 9 and 10 October 2003 and adopted the present decision on the latter date.

III. STATEMENT OF FACTS

19. The applicant was an Assistant Minister of Defence, Main Defence Inspection, and a Lieutenant General of the Federation of BiH Army.

20. On 12 April 2001, the Government of the Federation of BiH discharged the applicant of his duties as Assistant Minister of Defence. This procedural decision was published in the Official Gazette on 13 April 2001. The applicant alleges that he did not know the decision was issued and published in the Official Gazette.

21. In his letter of 25 April 2001, the Minister of Defence of the Federation of BiH informed the Commander of the Stabilization Forces (hereinafter: "COMSFOR")[1] that he has the intention to terminate service *ex officio* of several members of the Federation of BiH Army, amongst them the applicant, and asked the COMSFOR for permission in this regard. The Minister of Defence explicitly noted that the mentioned persons, including the applicant, have quit their posts and did not go to work without a reasonable explanation. Additionally, the Minister pointed out that the mentioned persons had violated Article 41 of the Law on Defence, prohibiting political involvement of all military members, and sections 2e – the prohibition for all military members to engage in partisan political activities - and 2f – the obligation for military officers to support the implementation of the General Framework Agreement for Peace (hereinafter: "General Framework Agreement")[2] - of Chapter 14 of the Instructions to the Parties (hereinafter: "ITP")(see paragraphs 41-45 below) The Chamber notes as background, that all parties involved have avoided explaining the reasons for the applicant's discharge. The Chamber regards the reason for the applicant's discharge as military officer his

[1] For the most part throughout the text of this decision, the Chamber adopts this terminology. However, in sections where the Chamber is referring to other sources, the COMSFOR is also called "SFOR Commander".
[2] For the most part throughout the text of this decision, the Chamber adopts this terminology. However, in sections where the Chamber is referring to other sources, the General Framework Agreement is also called "GFAP".

involvement in the Croat movement in March 2001 in which leaders of the Croat Democratic Union (Hrvatska Demokratska Zajednica, hereinafter: "HDZ") in Bosnia and Herzegovina announced that they were pulling out of statewide and federal governmental institutions. Bosnian Croats serving in the Federation Army and police forces were ordered to stop reporting for duty and as a consequence more than 7,000 Bosnian Croat troops quit their posts in support of the call for self-rule.

22. In an undated letter the COMSFOR, Michael L. Dodson, gave his approval for the "removal from position and service" of several "VF-H officers"[3], including the applicant. The Federation of BiH Ministry of Defence, according to the SFOR, received the letter on 20 June 2001.

23. On 20 May 2001, the Croat member of the Bosnia and Herzegovina Presidency issued a decision ceasing the active duty of the applicant as an officer of the Federation of BiH Army due to the applicant's retirement. The applicant alleges that he never received this decision and the Federation of BiH has not shown that the decision was delivered to the applicant.

24. On 20 May 2001, the Federation of BiH Ministry of Defence issued a procedural decision regarding the applicant's retirement. The applicant alleges that he never received this decision and the Federation of BiH has not shown that the decision was delivered to the applicant.

25. In August 2001, the Election Law of Bosnia and Herzegovina (hereinafter: "Election Law") was adopted, which provided for the national authorities to administer elections in Bosnia and Herzegovina.

26. On 3 September 2001, the Federation of BiH Minister of Defence sent a letter to the COMSFOR asking for his permission to retire several military officers including the applicant. The COMSFOR gave this permission.

27. On 22 April 2002, the Election Commission sent a letter to SFOR requesting a list of military officers discharged of duty in accordance with the provisions of Article 18.9A paragraph 4 of the Election Law[4] (see paragraphs 36-39 below).

28. On 13 May 2002, the COMSFOR, Lieutenant General John B. Sylvester, sent his answer to the Election Commission providing the names of "military personnel suspended or removed by action of the COMSFOR." The information provided in this letter notes that the applicant was removed on 19 June 2001.

29. On 18 May 2002, the applicant submitted his application to the Election Commission to participate as an independent candidate in the General Elections in October 2002. The applicant stated during the public hearing that he intended to run for the Federation House of Representatives.

30. On 23 May 2002, the Election Commission requested additional information from SFOR in relation to the applicant, since the letter of 13 May 2002 did not contain all the information needed, namely the personal identification number and date of birth. The Election Commission received the requested additional information from SFOR on 29 May 2002.

31. On 6 June 2002, the Election Commission issued a decision rejecting the application of the independent candidate Nedjeljko Obradović, "as he was discharged by the SFOR Commander decision of 19 June 2001". The Election Commission determined that the applicant cannot be a candidate nor can he perform any elected or appointed function in accordance with Article 18.9A paragraph 4 of the Election Law. The decision notes that a request for review can be submitted to the same Election Commission.

32. The applicant submitted a request for review to the Election Commission, in which the applicant alleges that he was not discharged by SFOR, but by the Federation of BiH Ministry of Defence. On 12 June 2002, the Election Commission confirmed its decision of 6 June 2002. The

[3] VF-H stands for Vojska Federacije-Hrvatska strana (Federation Army—Croat side).
[4] Article 19 of the Law on Amendments to the Election Law, published on 3 August 2002 in the Official Gazette of Bosnia and Herzegovina no. 20/02, provides that former Article 18.9A shall become Article 19.9A.

decision states that the applicant did not submit any documents to support his claim that he has been discharged by the Federation of BiH Ministry of Defence and not by SFOR.

33. On an unspecified date, the applicant lodged an appeal to the Appellate Department of the Court of Bosnia and Herzegovina against the decision of the Election Commission of 12 June 2002. On 5 July 2002, the Court of Bosnia and Herzegovina rejected his appeal and confirmed the decision of the Election Commission of 12 June 2002. In its reasoning, the Court of Bosnia and Herzegovina held that the Election Commission properly applied Article 18.9A of the Election Law because the applicant was discharged by the COMSFOR decision of 19 June 2001. The Court of Bosnia and Herzegovina rejected the applicant's complaint, that he did not receive the decision of the COMSFOR, as unfounded. Firstly, the Court of Bosnia and Herzegovina noted that these decisions are never delivered to the officers discharged of duty, as there is no remedy available against these decisions. Secondly, the applicant does not dispute that he found out about the decision on 5 June 2002, and the decision was published in official sources and the public media. Therefore, the Court of Bosnia and Herzegovina concluded that the applicant's complaint does not affect the legal matter before the Court. The Court of Bosnia and Herzegovina also rejected the applicant's complaint that he was dismissed as a civilian, and not as a military official, as unfounded. The Court of Bosnia and Herzegovina stated, that "from the mentioned COMSFOR decision, it is clear that Nedjeljko Obradović was replaced as a military officer, and not as a civilian." The Court of Bosnia and Herzegovina noted that the applicant did not submit any evidence in support of his appeal, but merely made a statement in this regard. The Chamber has requested the respondent Party to clarify whether the Court of Bosnia and Herzegovina, in deciding the applicant's appeal, had a decision of the COMSFOR in the case file. The respondent Party has been unable to do so and the Chamber concludes that the Court of Bosnia and Herzegovina was not in possession of such decision.

34. Three letters submitted to the Chamber by SFOR show that SFOR acknowledged the receipt of letters sent by the applicant and that SFOR found no reason to reverse its original decision to remove the applicant from position and service. The dates on these letters from SFOR are 12 June 2002, 5 October 2002 and 16 December 2002.

35. SFOR in its observations of 26 June 2003 states that the Minister of Defence on 3 September 2001 asked "that the COMSFOR approval for the applicant's removal be treated as a removal from duty and retirement for which the COMSFOR gave approval, and not as a removal from service." The Federation of BiH, in response, submitted a copy of the letter of 3 September 2001 to the Chamber to prove that the letter does not contain such request, as it merely states that the active duty of several officers, including the applicant, was ceased and that a decision on retirement has been issued by a member of the Presidency of BiH regarding the same military officers (see paragraph 26 above).

IV. RELEVANT LEGAL FRAMEWORK

A. Legal framework related to the right to stand for elections

1. Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina – hereinafter "OG BiH" – nos. 23/01, 7/02, 9/02, 20/02 and 25/02)

36. The Election Law was adopted by the Parliamentary Assembly of Bosnia and Herzegovina in August 2001, and was published in the Official Gazette of Bosnia and Herzegovina on 19 September 2001. Article 1.13 provides that an application for certification to participate in the elections shall include a statement signed by the President of the political party, coalition, or independent candidate stating that the activities of the political party, coalition or the independent candidate will comply with the General Framework Agreement. Article 2.9 sets forth that the Election Commission is an independent body which derives its authority from, and reports directly to, the Parliamentary Assembly. Among other things, the Election Commission is responsible for certifying the participation of political parties, coalitions, lists of independent candidates and independent candidates for all levels of election in Bosnia and Herzegovina. Article 4.1 prescribes that in order to participate in the elections, political parties, independent candidates, coalitions and lists of

independent candidates shall certify their eligibility with the Election Commission of Bosnia and Herzegovina.

37. Article 4.10 of the Election Law sets forth that the Election Commission shall certify the application of an independent candidate for participation in the elections if the application meets the requirements established by this law. The Election Commission shall examine within 2 days whether the application was submitted in accordance with this law, and certify, reject or request the candidate to correct his or her application. If the Election Commission rejects the application, the applicant shall have the right to request the Election Commission to reconsider the decision within two days. The Election Commission shall make a decision within 3 days.

38. On 28 March 2002, the High Representative imposed an amendment to the Election Law, Article 18.9A, which became Article 19.9A. In the preamble to the amendments of 28 March 2002, the High Representative states:

> "Considering that in Article 1.13 of the Election Law of Bosnia and Herzegovina it is stated that the application for certification to participate in the elections shall include a statement signed by the President of a political party stating that the activities of the political party will comply with the General Framework Agreement for Peace in Bosnia and Herzegovina; Further Considering the importance and necessity to advance the above mentioned provisions, in order to prevent further obstruction to the implementation of the General Framework Agreement for Peace, recognising the provisions adopted by the Parliamentary Assembly of Bosnia and Herzegovina in the Election Law;..."

39. On 3 August 2002, Article 19 of the Law on Amendments to the Election Law was published in the Official Gazette of Bosnia and Herzegovina no. 20/02, whereby former Article 18.9A became Article 19.9A. Article 19.9A, as amended, of the Election Law provides as follows:

> "Until the High Representative's mandate terminates or he or she so decides the exclusions in the following four paragraphs shall have effect:
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> No person who has been removed by the Provisional Election Commission or the Election Appeals Sub-Commission, for having personally obstructed the implementation of the General Framework Agreement for Peace or violated the Provisional Election Commission *Rules and Regulations* shall be permitted to be a candidate in the elections or hold an elected mandate or an appointed office.
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> No person who has been removed from public office by the High Representative shall be permitted to be a candidate in the elections or hold an elected mandate or an appointed office.
>
> No military officer or former military officer who has been removed from service pursuant to Chapter 14 of the *Instructions to the Parties* issued by COMSFOR under Article VI Paragraph 5 of Annex 1A to the General Framework Agreement for Peace, shall be permitted to be a candidate in the elections or hold an elected mandate or an appointed office.
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> No person who has been de-authorized or de-certified by the IPTF Commissioner for having obstructed the implementation of the General Framework Agreement for Peace, shall be permitted to be a candidate in the elections or hold an elected mandate or an appointed office."

2. Law on the Court of Bosnia and Herzegovina (OG BiH nos. 29/00, 16/02, 24/02 and 13/03)

40. Article 15, paragraph 2 of the Law on the Court of Bosnia and Herzegovina, entitled "Appellate Jurisdiction", provides that the Court of Bosnia and Herzegovina shall have jurisdiction over:

"a) complaints concerning violations of the electoral code and the additional regulations and directives issued by the Permanent Election Commission;

b) any other case for which competence is provided by the laws of Bosnia and Herzegovina."

3. Chapter 14 of the *Instructions to the Parties*

41. Chapter 14, entitled "AFBiH in a Democratic Society Ethics, Development and Cooperation[5]" states in section 1, entitled "General" that the citizens of Bosnia and Herzegovina must be able to have confidence in the AFBiH officers, and that the implementation of the peace process will be encouraged by AFBiH members whose support for that process is unquestioned, and who refrain from inappropriate involvement in the political life of Bosnia and Herzegovina and its Entities. Section 1c notes that this Instruction applies to:

"… all General Officers of the AFBiH regardless of their status (active, inactive, reserve, or other status) serving in, or being considered for promotion to, the military rank equivalent to the NATO designation of OF-6 or higher. Such officers are identified within this document as "General Officers'. It applies to any proposed promotion to, lateral move within, appointment, removal (generally construed to mean a permanent and punitive expulsion from the AFBiH), suspension, demotion or retirement from such ranks of any AFBiH General Officer."

42. Section 2e of Chapter 14 addresses the prohibition on General Officers from participating in political matters, with the exception of voting. The prohibited activities outlined in subsection 2 are as follows:

(a). Professional military members are not permitted to be members of political parties.

(b). Officers of all ranks shall not use their official position to interfere with or influence the course or outcome of an election, or solicit votes for a candidate or for a specific issue.

(c). Officers shall not hold elected or appointed public office while in an active status or attempt to influence members of public office for private gain.

(d). Officers shall not assist or manage a political campaign, or solicit, accept or receive political contributions.

(e). Officers shall not participate, in any way, in political campaigns or events such as rallies, dinners, parades, meetings, fundraisers or speaking engagements, whether in or out of uniform.

(f). Officers shall not allow their titles or positions to be used for political purposes.

(g). Officers shall not ask subordinates to volunteer for or to contribute to political causes, rallies or to participate in political fundraising activities.

(h). Officers shall not stand for nomination or be a candidate for any partisan political cause or office.

(i). Officers shall not solicit, encourage or discourage participation in political activities, other than to encourage others to vote.

(j). Officers shall not publish or cause to be published any partisan political articles in support of or against any political issue, party or candidate.

(k). Officers shall not serve in any official capacity, or sponsor or endorse any political party or partisan political club or organization.

[5] AFBiH stands for Army of the Federation of Bosnia and Herzegovina.

(l).Officers will not participate in any radio, television, Internet or other program or group discussion as an advocate for or supporter of any partisan political issue, party or candidate.

(m).Officers shall not use contemptuous words against public office holders or candidates.

(n).Officers will not display political signs, banners or posters on government or private vehicles or property.

(o).Officers will not provide or arrange for the use of private or government vehicles for transportation of persons to a political rally or meeting or to vote.

43. Section 2f of Chapter 14 requires all military officers to support the Dayton Peace Agreement and provides as follows:

> "Military officers are expected to support the Implementation of the GFAP, which has been explained and supplemented in the Instructions To The Parties (ITP). Anti-Dayton Peace Agreement activities and obstructionism by any officer are not permitted, and constitute grounds for removal."

44. Section 3 of Chapter 14 —"Procedures"— section 3c entitled "Promotions, Transfers, Retirements, Suspensions, and Removals within General Officer Ranks" provides that, "All actions to … demote, remove, suspend, or retire any serving General Officer requires the prior written approval of COMSFOR."

45. Section 5 of Chapter 14, entitled "Failure to comply with the provisions of the ITP" provides as follows in paragraph b:

> "If any Party or any military member fails to comply with the standards of this Instruction, that Party of officer is subject to action by COMSFOR. Such actions may include, but are not limited to, disapproval of a nomination for promotion, suspension or removal of a non-compliant officer of any rank, restrictions or bans on training and/or equipment use, or disbandment of a unit or organisation."

B. Legal framework related to the Federation of Bosnia and Herzegovina

1. Law on Defence of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 15/96, 23/02 and 28/03)

46. The Federation of BiH states that the decision ceasing the active duty of the applicant due to his retirement was issued in accordance with Article 22 paragraph 1 of the Law on Defence. This article provides as follows:

> "This law recognises the provisions of the Constitution of Bosnia and Herzegovina agreed on in Dayton which provide that: "Every member of the Presidency shall, by the nature of his/her function, have authorisations of civil command over the armed forces…All armed forces in Bosnia and Herzegovina shall act in pursuance to the sovereignty and territorial integrity of Bosnia and Herzegovina."

47. The Minister of Defence of the Federation of BiH, in his letter of 25 April 2001, stated that the applicant had violated Article 41 of the Law on Defence, and for this reason the Minister sought the COMSFOR to take appropriate action. Article 41 of the Law on Defence provides as follows:

> "Any political activity, establishment of parties, holding of political assemblies or political demonstrations, or any kind of discrimination on the basis of political membership, within the

Army of the Federation is prohibited. Officers on active duty are not allowed to participate in any political activity except voting.

Military personnel and all the persons in the service of the Army of the Federation are forbidden to strike."

2. Law on Federal Ministries and Other Bodies of the Federal Administration (OG FBiH nos. 8/95, 2/96, 3/96 and 9/96)[6]

48. The Federation of Bosnia and Herzegovina states that the applicant was appointed according to Article 21 paragraph 1 of the Law on Federal Ministries and Other Bodies of the Federal Administration. Article 21 paragraph 1 provides as follows:

"The Government of the Federation of Bosnia and Herzegovina, upon the proposal of the Minister, shall appoint Secretary of the Ministry, Deputy Ministers, Main Federal Inspector and Director of Administration and Administrative Organizations within the Ministry".

3. Decree on more favorable conditions for acquiring the right to retirement pension by military insurees of the Army of the Federation of Bosnia and Herzegovina (hereinafter: "the Decree") (OG FBiH no. 2/00)[7]

49. The Federation of BiH states that the procedural decisions of 20 May 2001 regarding the applicant's retirement and ceasing the applicant's labour relation were issued in accordance with Articles 2, 3 and 7 of the Decree.

50. Article 2 provides as follows:

"For the purpose of this Decree a military insuree is considered as a professional military person who holds that status under regulations regulating military service."

51. Article 3 provides as follows:

"For the purpose of rationalization and to decrease the number of the Army of the Federation of Bosnia and Herzegovina's members, a military insuree under Article 2 of this Decree having at least 50 years of age and 20 years of service shall acquire the right to retirement pension under the Federal Ministry of Defence's proposal. "

"Exceptionally, a military insuree shall acquire the conditions for a retirement pension by the decision of the Commander-in-chief of the armed forces of the Federation of BiH if he/she has a minimum of 20 years of retirement service and the rank of a brigadier, *i.e.* a senior rank."

52. Article 7 provides as follows:

"A military insuree acquires a retirement pension under conditions established by this Decree if he/she has ten consecutive years of service as a military insuree and if he/she holds the status as a military insuree at the time of acquiring the right to pension."

"If the Law on Pension and Disability Insurance recognizes additional years of service (Official Gazette of the Federation of Bosnia and Herzegovina, no. 29/98) though the military insuree does not have ten consecutive years of service as a military insuree, any additional years of service shall be taken into account for acquiring the right to a retirement pension."

[6] This law was replaced by the issuance of the Law on Ministries of the Federation and other bodies of the Federal Administration, as published in the OG FBiH no. 58/02.

[7] This decree was revoked by the issuance of the "Decree putting out of force the Decree on more favorable conditions for acquiring the right to retirement pension by military insurees of the Army of the Federation of Bosnia and Herzegovina", as published in the OG FBiH no. 21/01.

4. Law on Employment Relations and Salaries of Employees of Administrative Bodies in the Federation of Bosnia and Herzegovina (OG FBiH no. 13/98)

53. The Federation of BiH states that the procedural decision of 20 May 2001 ceasing the applicant's labour relation was taken in accordance with Articles 125 and 168 paragraph 4 of the Law on Employment Relations and Salaries of Employees of Administrative Bodies in the Federation of BiH.

54. Article 125 provides as follows:

> "A ruling shall be issued on the cessation of employment.
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> The ruling referred to in paragraph 1 of this Article must be issued within seven days from the day of occurrence of the circumstance which was the reason for the cessation of employment.
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> The ruling on cessation of employment for the reasons stipulated by this Law shall be issued by the head of an administrative body, by the mayor in the city and by the municipal head in the municipality."

55. Article 168 paragraph 4 provides as follows:

> "The provisions of this Law shall also apply to the members of armed forces of the Federation, unless otherwise stipulated by a different Federation law and other Federation regulations."

5. Law on the Government of the Federation of Bosnia and Herzegovina (OG FBiH nos. 1/94, 8/95 and 58/02)

56. The Federation of BiH calls on Articles 18 and 19 of the Law on the Government of the Federation of BiH to show that the applicant has been discharged in accordance with a lawful procedure.

57. Article 18 provides as follows:

> "In carrying out their authorities as laid down in the Federation Constitution, the Federation Government shall take decrees with the force of law, ordinances, decisions, rulings and conclusions. The Federation Government shall take decrees with the force of law in accordance with the Federation Constitution. "

58. Article 19 provides as follows:

> "Decrees shall regulate the most important issues from the scope of competence of the Federation Government, regulate in detail relations concerning implementation of laws, form administrative, technical, and other Government services and provide for principles of internal organisation of the Federation authorities of the state administration."

V. COMPLAINTS

59. The applicant complains of not being able to participate in the proceedings discharging him of his duties. Specifically, he did not have the possibility either to state arguments against the discharge or submit an appeal against the decisions. The applicant further complains of being prohibited by the Election Commission from running in the General Elections in Bosnia and Herzegovina in 2002. The applicant therefore complains of a violation of Articles 6 and 13 of the Convention and Article 25(b) of the ICCPR in connection with discrimination.

60. In addition the Chamber considers that the application raises apparent issues with regard to the criminal charge aspect of Article 6 of the Convention and Article 3 of the First Protocol to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

1. As to the facts

61. On 31 December 2002, Bosnia and Herzegovina submitted a letter from the Election Commission, dated 30 December 2002, as its written observations. The Election Commission states that it does not make any difference between candidates discharged of duty by a decision of the COMSFOR and candidates whose removal was only permitted by the COMSFOR at the proposal of the Ministry of Defence of the Federation of BiH.

62. On 30 January 2003, Bosnia and Herzegovina again presented a letter from the Election Commission, dated 24 January 2003, as its written observations on the admissibility and merits. In its letter the Election Commission stated that, according to Article 18.9A paragraph 4 of the Election Law, a person discharged from duty by the COMSFOR is not allowed to run for elections. Therefore, the Election Commission requested a list from SFOR of the persons discharged. It received a list of military personnel suspended or removed by action of the COMSFOR and the Election Commission based its decision on this list, which states that the applicant has been removed as well. At the public hearing, Bosnia and Herzegovina conceded that the Election Commission had neither sought nor received the decision discharging the applicant, but based itself on the letter of the COMSFOR listing the applicant among those he had removed from position and service.

63. The Election Commission disputes the facts as presented by the applicant in his application to the Chamber, in particular the allegation that when the new political regime came to power, *i.e.* after the elections of 2000, the new Minister of Defence requested the discharge of many military officers and the applicant was amongst those. The Election Commission does not agree with this statement, since SFOR sent them a letter stating the names of officers removed by action of the COMSFOR, not by the Ministry of Defence. The Election Commission also points out that the list does not only contain names of officers of the Federation of BiH Army, but also of the Republika Srpska Army.

64. The Election Commission states that, as the decision was taken in accordance with Article 18.9A of the Election Law, it did not consider it necessary to examine the reasons for the removal of the applicant, because it regards the High Representative as the final authority and, in view of the interpretation and implementation of the General Framework Agreement, his decision is final and binding. Nor is it interested in whether the applicant ever received the decision to discharge him. The Election Commission only needed a list of people discharged in order to determine whether the applicant can participate in the elections.

2. As to the admissibility and merits

65. Bosnia and Herzegovina considers the application admissible as the applicant has exhausted all domestic remedies. In its submission, received on 1 September 2003, Bosnia and Herzegovina states that Article 19.9A of the Election Law cannot have the same effect as a criminal charge under Article 6 of the Convention, as the applicant did not have the possibility to use a legal remedy against the decisions. Under criminal law, legal remedies are available to the accused, therefore Bosnia and Herzegovina considers that the sanction imposed on the applicant cannot be the consequence of the determination of a criminal charge within the meaning of Article 6 of the Convention. Accordingly, Bosnia and Herzegovina considers the application inadmissible in this respect.

66. Bosnia and Herzegovina did not make any further submissions on the admissibility and merits of the application.

B. The Federation of Bosnia and Herzegovina

1. As to the facts

67. The Federation of BiH states that the applicant was appointed according to Article 21 paragraph 1 of the Law on Federal Ministries and Other Bodies of the Federal Administration and performed all duties until 12 April 2001, the day the Government of the Federation of BiH discharged him of his duty as Assistant Minister of Defence, as published in the Official Gazette. SFOR approved the removal from position and service of the applicant, as a high-ranking military officer, in its undated letter (see paragraph 44 above).

68. On 20 May 2001, a member of the Bosnia and Herzegovina Presidency issued a decision ceasing the active duty of the applicant due to the applicant's retirement; the decision was taken in accordance with Article 22 paragraph 1 of the Law on Defence of the Federation of Bosnia and Herzegovina and Article 3 paragraph 2 of the Decree (see paragraphs 46 and 51 above).

69. On 20 May 2001, the Federation of BiH Ministry of Defence issued a procedural decision, in accordance with Articles 125 and 168 paragraph 4 of the Law on Employment Relations and Salaries of Employees of Administrative Bodies in the Federation of Bosnia and Herzegovina and Articles 2, 3 and 7 of the Decree, ceasing the applicant's labour relation (see paragraphs 50-52, 54 and 55 above). The applicant did not appeal either of the decisions.

2. As to the admissibility

70. The Federation of BiH considers the application to be inadmissible, on the grounds that the applicant did not exhaust all domestic remedies. Among the domestic remedies that the applicant could have exhausted, but did not, are the following. First, Article 222 paragraph 6 of the Law on Administrative Procedure allows for an administrative dispute before the competent court. This means that the applicant could have initiated an administrative dispute against the decision issued on 12 April 2001, that discharged him of his duties as Assistant Minister of Defence. Secondly, the applicant could have filed an appeal against the decision issued by the Federation of BiH Ministry of Defence of 20 May 2001, within 8 days after he had received the decision.

71. The Federation of BiH considers the case inadmissible not only because the domestic remedies have not been exhausted, but also because the application had not been filed within 6 months from such date on which the final decision was taken. The respondent Party notes that the decision by the Government of the Federation of BiH was issued on 12 April 2001 and the decision of the Federation of BiH Ministry of Defence was issued on 20 May 2001 and the applicant did not file an application to the Chamber until 28 November 2002. This means that the six months rule, as required under Article VIII(2)(a) of the Agreement, has not been respected.

3. As to the merits

a. Article 6 of the Convention

72. The Federation of BiH refers to Articles 18 and 19 of the Law on the Government of the Federation of BiH (see paragraphs 57 and 58) to show that the applicant has been discharged from his duties as the Assistant Minister of Defence according to a procedure provided by law. As already set out above, the applicant could have initiated an administrative dispute against this decision of 12 April 2001, therefore a fair procedure was available to him. Later SFOR gave its permission for the discharge of the applicant as military officer. The Federation of BiH notes that this permission was given in accordance with the General Framework Agreement.

73. The decision of 20 May 2001, ceasing the active duty of the applicant due to his retirement was taken in accordance with Article 22 paragraph 1 of the Law on Defence of the Federation of BiH

and Article 3 paragraph 2 of the Decree and Articles 125 and 168 paragraph 4 of the Law on Employment Relations and Salaries of Employees of Administrative Bodies in the Federation of BiH (see paragraphs 46, 51, 54 and 55). Therefore, the Federation of BiH holds that its organs have acted in accordance with Article 6 of the Convention.

74. The Federation of BiH puts forward in its additional observations that it does not understand what criminal proceedings the Chamber is referring to in raising the question of a possible violation of Article 6 of the Convention. Furthermore, the Federation of BiH holds that the sanction pronounced against the applicant under Article 18.9A of the Election Law does not have the same effect as criminal sanctions in criminal proceedings, as the Election Commission is not a court and its decisions are based on the provisions of the Election Law and not on the provisions of the Criminal Code.

b. Article 13 of the Convention

75. The Federation of BiH claims that there has not been a violation of Article 13 of the Convention, as effective remedies were available, but the applicant did not use them.

C. The applicant

1. As to Bosnia and Herzegovina

76. In his application, the applicant argues that his right to be elected, as embodied in Article 25(b) of the ICCPR has been violated by Bosnia and Herzegovina. The applicant alleges that the Election Law is not in accordance with the ICCPR.

77. The applicant responded to the submissions of Bosnia and Herzegovina in a letter received by the Chamber on 24 February 2003. The applicant alleges that prior to submitting his application to run for elections he took certain informal steps to determine if there would be any objections to his candidacy. The applicant specified those steps in his letter. One example is the meeting organized by the, at that time, advisor on military issues to the Croat member of the Presidency, with SFOR and OSCE in attendance. The applicant alleges that, though he did not attend the meeting himself, during this meeting it was discussed whether the applicant's discharge could be an objection to run for elections and they all claimed that his discharge would not be an objection. Another informal step the applicant specified in his letter is the conversation he had with a representative of the Federation of BiH Ministry of Defence, who stated that they had received permission to replace him, but this is not discharge but only approval. The applicant has not submitted any documents supporting these statements.

2. As to the Federation of Bosnia and Herzegovina

78. The applicant alleges a violation of Articles 6 and 13 of the Convention as he never received any decision regarding his dismissal and he could therefore not avail himself of any domestic remedies. The applicant points out that the Federation of BiH does not state any reason why they did not send him any decision. The applicant claims that he found out about the decisions from a friend on an unknown date and via a daily newspaper at the time he submitted his application to participate as a candidate in the General Elections in 2002.

79. The applicant agrees with the Federation of BiH's submission that the COMSFOR gave his permission for the applicant to be discharged. The applicant points out that this supports his claim and that there is a contradiction in the submissions of the respondent Parties. The Election Commission claims that the applicant has been removed by SFOR, while the Federation of BiH states that SFOR permitted his discharge.

D. Organization for Security and Co-operation in Europe (OSCE)

80. In its *amicus curiae* brief, OSCE discusses two issues. Firstly, whether the implementation of Article 19.9A of the Election Law meets the requirements of Article 3 of the First Protocol to the Convention, as well as Article 25 of the ICCPR in connection with Article II(2)b of the Agreement. Secondly, the OSCE comments on whether it is significant for the purpose of Article 19.9A of the Election Law, that the applicant was removed from his position by the COMSFOR and not merely approval was given by the COMSFOR.

81. As to the first issue, OSCE states that the right to vote and the right to stand for election are not absolute and States have a wide margin of appreciation as long as "there is no disproportionate limitation as would undermine the free expression of the opinion of the people in the choice of the legislature." Most importantly, to determine the proportionality, the political evolution of the state concerned must be taken in account and the fact that this margin is greater in systems that are incomplete or provisional. In reviewing a possible violation of Article 3 of the First Protocol to the Convention, the OSCE assesses the requirements that the restrictions must pursue a legitimate aim and that the means employed are not disproportionate. OSCE acknowledges the seriousness of possible obstructions of the implementation of the General Framework Agreement and notes that "the ban on the standing for election for individuals found to have obstructed the GFAP is a legitimate aim of the BiH government". As to the proportionality requirement, the OSCE states that "since Article 19.9A applies only to individuals already found to have obstructed implementation of the GFAP and its effect is temporary in nature, it cannot be viewed as a disproportionate means to achieve a legitimate aim". OSCE regards the part of the claim referring to Article 25 of the ICCPR as inadmissible, as the claim of discrimination has not been substantiated.

82. As to the second issue, OSCE states that the applicant's case does not qualify under Article 19.9A of the Election Law as the COMSFOR merely acquiesced to the dismissal. OSCE's opinion is that Article 19.9A of the Election Law only applies when an individual was removed in accordance with Chapter 14 of the ITP and only the COMSFOR is authorized to act under this Chapter.

83. However, at the public hearing, OSCE expressed its opinion that, while the ITP may not provide the most clear-cut guidelines as to the procedure by which officers are removed by the COMSFOR, looking at the totality of the circumstances one can surmise that the applicant's removal was in accordance with the ITP, and therefore caught by Article 19.9A of the Election Law.

E. Office of the High Representative (OHR)

84. OHR in its *amicus curiae* submission, dated 4 July 2003, notes in the introduction that, "decisions of all institutions enumerated in Article 19.9A of the Election Law, taken within their respective mandate, are final and binding for the authorities of BiH".

85. OHR firstly gives its opinion on the extent to which the implementation of the provisions of Article 19.9A of the Election Law meets the requirements of Article 3 of the First Protocol to the Convention. Referring to the case law of the European Court of Human Rights (hereinafter: the "European Court"), OHR states that the rights to vote and to stand for election are important rights, but not absolute and the article allows for implied limitations. OHR asserts that Article 19.9A of the Election Law pursues a legitimate aim, as the "rational behind the article is to ban persons who had personally obstructed the implementation of the GFAP and endangered the establishment of a democratic society." As to the proportionality of the measures employed, OHR states that,

> "all decisions taken by the international bodies listed under Article 19.9A cannot be considered to be within the scope of responsibility of the respondent Party. OHR notes that Article 19.9A is limited in two ways. Firstly, once the High Representative's mandate terminates, the exclusion employed by the Article would be lifted by force of this Law and, secondly, the High Representative, within his mandate and using Bonn powers entrusted to him, has discretion to lift this ban."

86. It follows, according to OHR, that Bosnia and Herzegovina cannot be found in breach of Article 3 of the First Protocol to the Convention.

87. As to the alleged violation in connection with Article 25 of the ICCPR, OHR states that the applicant fails to show the grounds under which he was discriminated against and did not provide any evidence to that extent.

88. As to whether the sanction provided for in Article 19.9A of the Election Law could be considered to involve 'a determination of a criminal charge', OHR states that the ban provided for is of a political nature and is meant to forbid persons who have personally obstructed the implementation of the General Framework Agreement and endangered the establishment of a democratic society from standing as candidates for elections. OHR reiterates the purpose of the ban and concludes that it cannot involve 'a determination of a criminal charge'.

F. Stabilization Force (SFOR)

89. In its letter dated 24 June 2003, SFOR responded to the Chamber's letter in order to assist the Chamber and not in the capacity of an *amicus curiae*. As a preliminary matter, SFOR explains that the term 'removed from service' means a 'permanent and punitive expulsion' pursuant to section 1c of Chapter 14 of the ITP.

90. Additionally, SFOR responded to the Chamber's inquiry about the COMSFOR's basis for approving the removal of the applicant from his position and service. "COMSFOR is the final interpretive authority over the military aspects of the GFAP and therefor COMSFOR may remove any AFBiH officer who engages in activities that endanger the peace process." Relying on the letter sent to the COMSFOR by the Federation of BiH Minister of Defence, dated 25 April 2001, the COMSFOR gave its approval for the applicant's removal from position and service.

91. As to the question why the COMSFOR approved the removal from position and service when it appears that the applicant was already retired on 20 May 2001, SFOR notes that the chronology with respect to the matter of this retirement is somewhat complicated. On 3 September 2001, the Minister of Defence sent a second communication to the (new) COMSFOR asking that the COMSFOR approval for the applicant's removal be treated as a removal from duty and retirement for which the COMSFOR gave approval, and not as a removal from service. The Minister attached a copy of the procedural decision regarding the applicant's retirement of 20 May 2001, stating that the applicant's military service had been terminated and that the applicant is transferred to the reserve as of 20 May 2001. The COMSFOR, in response to the Minister's letter, approved the retirement. The COMSFOR did this knowing that the approval was necessary in order for the applicant to receive pension. However, SFOR notes in its letter, the original removal from position and service remained in effect.

VII. OPINION OF THE CHAMBER

A. Admissibility

92. 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. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether they have been exhausted. Further, pursuant to Article VIII(2)(c), the Chamber shall dismiss any application, which it considers incompatible with the Agreement (*ratione materiae* or *ratione personae*) or manifestly ill-founded.

1. Complaint in relation to Article 6 of the Convention

93. Article 6 of the Convention, in relevant part, provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. …."

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
> b. to have adequate time and facilities for the preparation of his Defence;
> c. 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;
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

94. Accordingly, in order for Article 6 of the Convention to be applicable, the proceedings complained of must either concern the determination of a civil right or obligation, or the determination of a criminal charge.

(a) Existence of a "civil right"

95. The Chamber notes that the European Court has held that Article 6 of the Convention is not applicable to proceedings concerning the employment, careers, and dismissal from employment where an applicant has exercised "powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities" (Eur. Court HR, *Pellegrin v. France*, judgement of 8 December 1999, Reports of Judgments and Decisions 1999-VIII, paragraph 66). The *Pellegrin* decision makes it clear that military officers fall within this category:

> "The Court therefore rules that the only disputes excluded from the scope of Article 6(1) of the Convention are those which are raised by public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depository of public authority responsible for protecting the general interests of the State or other public authorities. *A manifest example of such activities is provided by the armed forces and the police.*"

(*Pellegrin*, paragraph 66, emphasis added).

96. In the present case, the applicant was dismissed as the Assistant Minister of Defence and discharged as a high-ranking military officer. While the Chamber does not wholly embrace the approach of the European Court taken in *Pellegrin*, in the case at hand, at least, it concludes, that disputes regarding the discharge of senior military officers and dismissal of an Assistant Minister, such as the applicant, fall outside the scope of Article 6(1) of the Convention. Therefore, the Chamber finds that the dispute in the present case does not concern the determination of a "civil right" within the meaning of Article 6 of the Convention.

(b) The existence of a "criminal charge"

97. Alternatively, Article 6 of the Convention may still apply if the removal of the applicant from office and his exclusion from the elections constitute sanctions that were imposed as a consequence of a "criminal charge". The Federation of BiH argues that this leg of Article 6 of the Convention cannot be applicable to the applicant's case, because no criminal proceedings were initiated against him. Indeed, there is no doubt that the applicant was not subjected to any criminal proceedings as classified under the laws of Bosnia and Herzegovina or the Federation of BiH. The Chamber notes, however, that the notion of "criminal charge" has an autonomous meaning under the Convention, which may include disciplinary proceedings (Eur. Court HR, *Campbell and Fell v. the United Kingdom*, judgement of 28 June 1984, Series A no. 80). Although disciplinary proceedings as such cannot generally be characterised as "criminal", the European Court has stated that this general rule might not apply in certain specific cases (see Eur. Court HR, *Engel and Others v. The Netherlands*, judgement of 8 June 1976, Series A no. 22, pp. 33-36, paragraphs 80-85).

98. In the present case, the Chamber considers whether the applicant's removal from office, dismissal as a member of the Federation Army and the sanction provided for in Article 19.9A of the Election Law, *i.e.* the prohibition on running for elections when removed from service pursuant to Chapter 14 of the ITP, are purely disciplinary measures or measures that can invoke the protection afforded by Article 6 of the Convention. In seeking to ascertain whether a given "charge", though disciplinary in nature, nonetheless counts as "criminal" within the meaning of Article 6, the European Court takes into account "the way in which it is described in domestic law, its nature, the degree of severity of the penalty and its purpose" (*Engel and Others*, paragraphs 80-83).

99. The Chamber notes that the "charges" brought against the applicant are that he violated Article 41 of the Law on Defence, prohibiting political involvement of all members of the military, and sections 2e – the prohibition for all military members to engage in partisan political activities - and 2f – the obligation for military officers to support the implementation of the General Framework Agreement – of Chapter 14 of the ITP (see paragraphs 42, 43 and 47). The sanctions inflicted against him are a "permanent and punitive expulsion" from military service, though afterwards converted into early retirement, and a *sine die* exclusion from the right to run for elections.

100. The European Court firstly looks at how the offence is classified under national law. If the offence is classified as a criminal one under national law, Article 6 of the Convention applies. If the offence has been classified as disciplinary/administrative, the European Court has developed two other criteria, namely the nature of the offence and the nature and the severity of the penalty.

101. In discussing the nature of the offence the European Court takes in account the scope of the violated norm and the purpose of the sanction.

102. The scope of the violated norm means, that – in order to be a criminal sanction – the sanction may not be targeted towards a specific group, but must have a generally binding character. "Disciplinary sanctions are", according to the European Court, "designed to ensure that the members of particular groups comply with the specific rules governing their conduct". A rule defining a criminal charge, on the contrary, will affect the general interests of society, normally protected by criminal law (see *Eggs* Case, European Commission of Human Rights report, 4 March 1978, Decisions and Reports 15 and *Weber* Case, European Commission of Human Rights report, 22 May 1990).

103. Applying this test to the rules the applicant has been found to have violated, the Chamber notes that they are rules specifically governing the military as a professional category. They are set forth in bodies of law applicable only to the military, the Law on Defence and the ITP. Moreover, the prohibition on political activity is a rule that contradicts the general principle of freedom of expression and would not be acceptable if it were not justified by the specific requirements of the military as a professional category. Accordingly, under the "scope of the violated norm" test, the applicant appears to have been found guilty of violating disciplinary rules of the military and not general criminal norms.

104. The next step in discussing the nature of the offence is the purpose of the sanction, as the purpose of criminal sanctions will generally be "deterrent and punitive" (Eur. Court HR, *Öztürk v. Germany*, judgement of 21 February 1984, Series A no. 73). In the applicant's case, the punitive character of the removal has been subsequently significantly softened by its conversion into retirement. The sanction provided for in Article 19.9A of the Election Law is, in the Chamber's opinion, more aptly described as a preventive measure to protect the BiH political system from the threat posed by persons in public service who do not support the constitutional principles, than as a punishment inflicted upon the applicant for past misconduct. Also in this respect, the sanctions inflicted against the applicant do thus not appear to be the result of the determination of a criminal charge.

105. The third criterion the European Court applies is the nature and severity of the penalty. Although the European Court does not have clear-cut requirements in order for the sanction to be regarded as criminal under Article 6 of the Convention, the case law indicates that the following point towards a disciplinary penalty being severe enough to make the article applicable: deprivations of liberty and registration of a fine in the police records, with the possibility that a fine will be converted

into deprivation of liberty if it is not paid (*Ravnsborg v. Sweden*, judgement of 23 March 1994, A283-B). The applicant before the Chamber has neither been deprived of his liberty as a consequence of the "offence", nor fined, nor has any entry been made into his criminal records.

106. The Chamber finally recalls, with regard to its own case law, that in *Lugonjić v. Bosnia and Herzegovina* (case no. CH/02/10476, *Lugonjić*, decision on admissibility and merits of 1 April 2003), the applicant complained of violations of human rights stemming from the termination of his employment as a police officer based on a decision by the International Police Task Force Commissioner. The Chamber decided that, although the notion of "criminal charge" may include disciplinary proceedings, "the consequences attached to the applicant's de-certification and removal do not establish the existence of a "criminal charge" that invokes protection under Article 6."

107. Having regard to all the above, the Chamber finds that the proceedings against the applicant did not concern the "determination of a criminal charge" for the purposes of Article 6 of the Convention. The Chamber therefore declares the application inadmissible *ratione materiae* in relation to the complaints under Article 6 of the Convention.

2. Article 13 of the Convention

108. The applicant complains of the fact that he did not have any effective remedy against his discharge and retirement by the Federation Ministry of Defence.

109. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

110. The Chamber notes that Article 13 of the Convention is not a free-standing right; it requires the availability of an effective remedy exclusively in cases in which the alleged violation concerns one of the substantive rights and freedoms of the Convention, and it cannot be applied independently. Article 13 of the Convention requires the applicant to present an "arguable claim to be the victim of a violation of the rights set forth in the Convention" (Eur. Court HR, *Silver & Others v. United Kingdom*, judgement of 25 March 1983, Series A no. 61, paragraph 113).

111. Thus, with regard to the applicant's complaints under Article 13 of the Convention in relation to his dismissal and retirement from the Federation of BiH Army, the Chamber declares the application inadmissible as manifestly ill-founded because the applicant has failed to show that he had an arguable claim of a violation of the rights and freedoms protected by the Convention.

3. Complaint in relation to the right to run for elections and of discrimination in this respect

(a) Article 25(b) of the International Covenant on Civil and Political Rights

112. The applicant alleges a violation of his right to vote and his right to run for elections. He also alleges that he was discriminated against in the enjoyment of these rights on unspecified grounds. He brings these complaints under Article 25(b) of the ICCPR.

113. The Chamber notes, however, that the applicant has failed to explain on what ground he considers himself to be a victim of discrimination and to substantiate this allegation. Under Article II(2)(b) of the Agreement, the Chamber only has jurisdiction to consider the rights protected by the ICCPR in connection with alleged or apparent discrimination in the enjoyment of such rights. The applicant's case does not disclose any appearance of discrimination. It follows that the allegation of discrimination in respect of the right to run for elections under Article 25(b) of the ICCPR is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement, as the applicant did not substantiate the complaint. Moreover, under Article II(2)(b) of the Agreement, the Chamber cannot consider allegations of a violation of rights protected by the ICCPR in isolation, but only in conjunction with discrimination in the enjoyment of those rights. Therefore, insofar as the applicant is alleging a

violation of his rights under Article 25(b) of the ICCPR, that part of the application is incompatible *ratione materiae* with the Agreement and thus inadmissible.

(b) Article 3 of the First Protocol to the Convention

114. Exercising its jurisdiction to consider "apparent violations" of the rights protected by the Agreement in addition to violations alleged by the applicant, as set forth in Article II(2) of the Agreement, the Chamber has, however, transmitted the complaint relating to the right to run for elections also under Article 3 of the First Protocol to the Convention, which is applicable in the absence of discrimination as well. It will now consider issues relating to the admissibility of the application in this part.

115. The Chamber first observes that the complaint related to the right to run for elections involves the Election Law, the Election Commission, and the Court of Bosnia and Herzegovina, which invokes the responsibility of Bosnia and Herzegovina. Bosnia and Herzegovina has not objected to the admissibility of the application on any grounds. However, the OHR, in its *amicus curiae* submission received on 4 July 2003, states that, "…the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party." The Chamber will therefore address whether the applicant's complaint in connection with the right to run for elections invokes the responsibility of Bosnia and Herzegovina.

116. In this regard, the Chamber recalls that Annex 3 to the General Framework Agreement, entitled "Agreement on Elections", authorised the OSCE to organise and run the elections in Bosnia and Herzegovina, including establishing a Provisional Election Commission. Annex 3 was considered an interim measure until the conditions were present for national authorities to supervise and run the elections, including establishing a Permanent Election Commission. In August 2001, the Election Law was adopted which provided for the national authorities to administer the elections. The members of the Election Commission were appointed in November 2001 and it held its first session on 20 November 2001. From that point on, the Provisional Election Commission, and the OSCE's supervisory role in the elections, ceased.

117. The OHR in its *amicus curiae* submission, refers to the Chamber's decision of 14 May 1998 in case nos. CH/98/230 and 231 *Suljanović, Čišić and Lelić v. Bosnia and Herzegovina and the Republika Srpska* (Decisions and Reports 1998) where the Chamber found that the Parties to the General Framework Agreement agreed to the intervention of OSCE under Annex 3 to manage the elections in Bosnia and Herzegovina. Specifically, the acts complained of in those applications involved the OSCE, the Provisional Election Commission and the Election Appeals Sub-Commission, and therefore the applications were found not to be within the Chamber's competence *ratione personae*. However, the Chamber differentiates the application at hand as the actions complained of occurred when the Election Law was in place and the domestic authorities were responsible for the administration of the elections, and not the OSCE.

118. The OHR also recalls the Chamber's decision of 18 December 1998 in case no. CH/98/1266, *Čavić v. Bosnia and Herzegovina*, (Decisions and Reports 1998), where the Chamber found, that

> "Article II(2) of the Agreement gives the Chamber competence to consider, *inter alia*, alleged or apparent violations of human rights for which it is alleged or apparent that the Parties are responsible. It does not provide for the possibility of the Chamber considering applications directed against the High Representative. As the Chamber has previously stated, it is beyond doubt that the actions of the High Representative are not subject to any review in relation to the carrying out of his functions under the General Framework Agreement. For this to be the case, the General Framework Agreement would have to provide specifically for any such review…"
>
> (*Čavić*, paragraph 18)

119. The Chamber also found in the *Čavić* decision, that

> "The actions complained of were carried out by the High Representative in the performance of his functions under the General Framework Agreement, as interpreted by the Bonn Peace Implementation Conference. There is no provision for any intervention by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, the High Representative cannot be said to be acting as, or on behalf of, the State or the Entities when acting in pursuance of his powers. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party."
>
> (*Čavić,* paragraph 19)

120. The Chamber notes that it already has declared the applicant's complaints relating to his expulsion from the Federation of BiH military inadmissible. For the purposes of the right protected by Article 3 of the First Protocol to the Convention it is relevant that the applicant was barred from running for elections by the Election Commission and the Court of Bosnia and Herzegovina, in application of domestic law. The fact that Article 19.9A of the Election Law excludes from the elections any "military officer or former military officer who has been removed from service pursuant to Chapter 14 of the *Instructions to the Parties* issued by COMSFOR under Article VI Paragraph 5 of Annex 1A to the General Framework Agreement for Peace", and thereby refers to a decision by the COMSFOR which is beyond the responsibility of the Parties to the Agreement, is not sufficient to exclude the responsibility of Bosnia and Herzegovina for the alleged violation of Article 3 of the First Protocol to the Convention. The conduct involving the responsibility of the respondent Party is not the removal from service, but the fact that this removal from service is taken as the basis for the exclusion from the right to run for office. Any violations arising from the implementation of Article 19.9A of the Election Law fall within the scope of responsibility of Bosnia and Herzegovina. Therefore, this part of the application is admissible as against Bosnia and Herzegovina.

4. Conclusion as to admissibility

121. The Chamber finds that the application is admissible insofar as the applicant complains of his inability to run for elections, which is a right protected under Article 3 of the First Protocol to the Convention and which invokes the responsibility of Bosnia and Herzegovina. The Chamber finds the remainder of the claims inadmissible.

B. Merits

122. 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.

1. Article 3 of the First Protocol to the Convention

123. The applicant alleges a violation of his right to run for elections, as protected by Article 3 of the First Protocol to the Convention. Article 3 of the First Protocol to the Convention provides as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

124. In one of the first cases before the European Court regarding a violation of Article 3 of the First Protocol to the Convention, *Mathieu-Mohin and Clerfayt v. Belgium* (Eur. Court HR, judgement of 2 March 1987, Series A no. 113) the European Court held that the rights contained therein are not absolute; and that the states have a wide margin of appreciation in making the right to vote and the right to stand for elections subject to conditions, "as long as the conditions do not curtail the right in

question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means are not disproportionate ..." (paragraph 52). This standard has been developed and applied in a number of other cases before the European Court, such as *Gitonas and others v. Greece* (Eur. Court HR, judgement of 1 July 1997, Reports 1997-IV) *Ahmed and Others v. the United Kingdom* (Eur. Court HR, judgement of 2 September 1998, Reports 1998-VI) and *Labita v. Italy* (Eur. Court HR, judgement of 6 April, Reports of Judgements and Decisions 2000-IV). In the *Podkolzina v. Latvia* case (Eur. Court HR, judgement of 9 April 2002), the European Court considered that the lack of procedural safeguards and arbitrariness involved in the removal of the applicant's name from the list of candidates constituted a violation of Article 3 of the First Protocol to the Convention. Therefore, the Chamber will, having in mind all circumstances which lead to the denial of the applicant's right to run for elections, assess whether the requirements of Article 3 of the First Protocol to the Convention have been met by the respondent Party, that is whether Article 19.9A of the Election Law excessively curtails the right to stand for elections and whether this provision seeks a legitimate aim and the means employed are not disproportionate.

(a) Does Article 19.9 A of the Election Law pursue a legitimate aim?

125. Bosnia and Herzegovina in its submissions does not address the legitimate aim of Article 19.9A of the Election Law, however, the *amici curiae* have provided ample considerations.

126. Both OSCE and OHR in their *amicus curiae* submissions stress that Article 19.9A of the Election Law pursues a legitimate aim. In its submission dated 19 August 2003, the OSCE states, "the aim of temporarily preventing certain persons from standing for election, as stipulated in Article 19.9A of the Election Law of BiH, is to prevent individuals found to obstruct implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina from continuing in public service." The OSCE further states that the ban is a necessary complement to removals from office by the High Representative, the COMSFOR and the International Police Task Force, as otherwise, individuals removed from their position quickly move to other public offices where they continue their obstructionist activities.

127. Additionally, the Chamber recalls the statement made by the High Representative upon imposing Article 19.9A of the Election Law referring to the need to ensure that all participants in the elections comply with the General Framework Agreement, as provided for in Article 1.13 of the Election Law (see paragraphs 36-39 above).

128. The Chamber can agree that, given the still fledgling nature of the post-war political system in Bosnia and Herzegovina, and the importance of ensuring that all public officials support the Dayton Peace Agreement in Bosnia and Herzegovina, the ban on standing for elections for former military officials removed pursuant to Chapter 14 of the ITP pursues a legitimate aim. In this regard the Chamber also recalls the *Mathieu-Mohin* and *Clerfayt* case, in which the European Court emphasised that any electoral system must be assessed in the light of the political evolution of the country concerned, so long as the free expression of the opinion of the people in the choice of the legislature is ensured (judgement of 2 March 1987, Series A no. 113, paragraphs 23-24).

129. As to the specific application of Article 19.9A of the Election Law in the case at hand, the Chamber recalls that the applicant was found to have quit his post and to have participated in political activities prohibited for members of the military, and to have been involved in activities contrary to the Dayton Peace Agreement, that is to say that he was involved in a movement which wished to institute "self-rule" of the Croat community in Bosnia and Herzegovina, activities which are in direct contravention to the General Framework Agreement and which threaten the substance of the peace process (see paragraph 21 above). Having this in mind, the Chamber also finds that the application of Article 19.9A of the Election Law in the case at hand, whereby the applicant was prevented from standing for elections, served a legitimate aim.

(b) Is there a proper balance between the legitimate aim pursued and the means employed?

130. Next, the Chamber must determine whether the interference with the applicant's right is proportional. In other words, has the respondent Party struck the right balance between preventing individuals found to have obstructed the Dayton Peace Agreement from holding public office and the applicant's right to stand for elections? In this regard, in keeping with the practice of the European Court, emphasis will be placed on considering the nature and severity of the interference (see, for example, *Selim Sadak and Others v. Turkey*, Eur. Court HR, judgement of 11 June 2002), and whether the eligibility conditions are imposed by a body that can provide guarantees of fairness and objectivity (see, for example, *Podkolzina v. Latvia*).

(i) The Nature and Severity of the Interference

131. As to the nature and severity of the interference in question, the Chamber recalls that in the *Sadak and Others* case, the European Court found a violation of Article 3 of the First Protocol to the Convention because the applicants, who were elected members of Parliament, were required to forfeit their seats because their political party was dissolved due to the words and actions of one member of their party. The European Court found that the penalty imposed on the applicants by the Constitutional Court could not be considered proportionate to any stated aim. In the case at hand, the Chamber observes that Article 19.9A of the Election Law is intended to apply to persons who are found to have personally participated in activities which are contrary to Dayton Peace Agreement. Moreover, the applicant before the Chamber was prevented from running for office and not removed from position as an elected representative, which arguably is a less severe interference. In this regard, the Chamber observes that paragraph 4 of Article 19.9A of the Election Law uses removal "pursuant to the Instructions to the Parties" as the grounds for banning participation in the elections. However, in reviewing the ITP, it is evident that a military officer could be removed from position and service for any number of activities, including, but not limited to, "Anti-Dayton Peace Agreement activities and obstructionism…." The Chamber reserves some concern for the fact that paragraph 4 of Article 19.9A of the Election Law relies upon proceedings (removal pursuant to the ITP) which could potentially catch persons who had not obstructed the Dayton Peace Agreement, but rather were removed from position and service for any of the other reasons outlined in the ITP. However, as the Chamber has, in the present case, found that the applicant allegedly participated in activities contrary to the Dayton Peace Agreement (see paragraph 21 above), and therefore was properly caught by Article 19.9A of the Election Law, the Chamber concludes that the nature and severity of the ban as set forth in Article 19.9A of the Election Law are sufficiently circumscribed so as to be proportionate to the aims sought.

(ii) Procedural Fairness

132. Finally, the Chamber will assess the fairness, objectivity and procedural safeguards afforded to the applicant during the course of the proceedings whereby he was banned from standing for election. The Chamber recalls that the applicant was not delivered the decisions from the Federation Ministry of Defence regarding his discharge from duty as Assistant Minister of Defence, the ceasing of his labour relation, and his retirement. Furthermore, the applicant also was not informed in any official capacity, either through a written letter, or delivery of a decision, that he had been removed from position and service by SFOR.

133. The Chamber also recalls that the Election Commission, in its decision of 6 June 2002, rejected the applicant's certification for participation in the elections on the grounds that the applicant "cannot be a candidate nor can he perform any elected or appointed function because he was dismissed from his duty by the SFOR Commander *Decision of 19 June 2001*". (emphasis added). On appeal, the Election Commission confirmed its decision on 12 June 2002, and, upon the applicant's lawsuit, the Court of Bosnia and Herzegovina also confirmed the decision of the Election Commission of 12 June 2002.

134. The Chamber observes four troublesome features in the proceedings whereby the applicant was prohibited from standing for election. Firstly, as described in paragraphs 20-24 above, the

applicant did not receive any of the decisions from the Federation of BiH Ministry of Defence related to his discharge from duty, ceasing of his labour relation, and retirement, nor did he receive any official notice from the Federation of BiH Ministry of Defence that he had been removed from position and service by the COMSFOR. The Chamber also notes that even if he had received the decisions from the Federation of BiH Ministry of Defence regarding his discharge from duty or the ceasing of his labour relation, he would not have known the reasons for the taking of these decisions, as they are conspicuously absent from these decisions. The Court of Bosnia and Herzegovina states that the applicant learned of the SFOR removal from position and service on 5 June 2002, and that the same was published in official publications. The Court of Bosnia and Herzegovina thus appears to find it satisfactory that the applicant learned of this decision more than one year after it was taken. The Court of Bosnia and Herzegovina also states that the SFOR decision was published in "official sources." However, from the record before the Chamber, this would appear not to be the case, as only the decision of 12 April 2001 related to his position as Assistant Minister of Defence of the Federation of BiH was published in the Federation of BiH Official Gazette. The Chamber finds the Court's utter disregard for the procedural safeguards that should have been afforded to the applicant unacceptable.

135. Secondly, both the Election Commission and the Court of Bosnia and Herzegovina refer to a decision of the COMSFOR dated 19 June 2001 which involved the applicant's removal from position and service, and use this decision as the basis for denying the applicant the right to stand for election. The Court of Bosnia and Herzegovina stated, "from the *decision of COMSFOR* and the letter of 29 May 2002, the Election Commission properly established that the COMSFOR dismissed Nedjeljko Obradović, the former general colonel as of 19 June 2001…" However, the Chamber observes that no such decision from the COMSFOR appears to exist. Rather, SFOR sent a letter, in response to the request from Minister Anić of the Federation of BiH Ministry of Defence, giving its approval for the applicant to be removed from position and service. The letter is undated, although it was allegedly received by the Federation of BiH Ministry of Defence on 20 June 2001. In any event, it has been established in the proceedings before the Chamber that the Court of Bosnia and Herzegovina never obtained a copy of the decision it relied on. The Chamber concludes that the Court of Bosnia and Herzegovina failed to adequately discharge the heavy burden incumbent on it to protect the applicant from arbitrary and injudicious decisions.

136. Thirdly, the Chamber observes that the applicant, both before the Election Commission and the Court of Bosnia and Herzegovina, attempted to assert that he was never removed from position and service by the COMSFOR, but rather dismissed by the Federation of BiH Ministry of Defence, which, in his opinion, would mean that Article 19.9A of the Election Law does not apply to him. The applicant appealed the decision of the Election Commission of 6 June 2002 on the grounds that he was dismissed by the Federation of BiH Ministry of Defence, and not by the COMSFOR. The Election Commission, in its decision on appeal dated 12 June 2002, confirmed their decision of 6 June 2002 and stated that the applicant did not submit any documentation in support of his. The Chamber observes that the applicant could not submit the decision concerning his discharge by the COMSFOR, as he never received such decision. In other words, the applicant could not substantiate his appeal as he was not privy to the necessary decisions or documentation.

137. Nevertheless, the Election Commission rejected the applicant's appeal because he had no evidence of his claim, (*e.g.* proof that he was dismissed by the Federation of BiH and not the COMSFOR) while the Court of Bosnia and Herzegovina stated that the decision from the COMSFOR dismissing the applicant is not sent to persons dismissed. The Court of Bosnia and Herzegovina found the applicant's objection that he did not receive the COMSFOR decision of 19 June 2001 ill-founded, as there is no remedy against such decision and therefore the decision was not sent to him. Moreover, the Court of Bosnia and Herzegovina states that the applicant does not contest that he learned about the decision on 5 June 2002, and that the same decision was published in official publications. As to his complaint that he was dismissed as a civilian and not as a military official, the Court of Bosnia and Herzegovina states, "It can be clearly seen from the mentioned COMSFOR decision that Nedjeljko Obradović was replaced as a military officer, not as a civilian." The Chamber notes the contradictions in these decisions, as the Election Commission requires the applicant to submit documentation in order to show that he was not discharged by the COMSFOR, while the Court of Bosnia and Herzegovina states that such decisions are never sent to the persons discharged.

Due to this, the applicant was effectively prevented from having his claim considered both before the first instance and second instance Election Commission, and by the judiciary.

138. Finally, related to the applicant's claim that Article 19.9A of the Election Law does not apply to him as he was discharged by the Federation of BiH Ministry of Defence, and approval was merely given by the COMSFOR, the Chamber observes that Article 19.9A of the Election Law merely states that the military officer involved must have been "removed from service pursuant to Chapter 14 of the Instructions to the Parties". The ITP provides two concrete ways in which an officer may be removed. Section 5, "Failure to comply with the provisions of the ITP", in paragraph b, provides that an officer who does not comply with the standards in the ITP is "subject to action by COMSFOR," which may include removal, among other things. Section 3c of the ITP requires only the COMSFOR approval as it states that, "all actions …to demote, remove, suspend or retire any serving General Officer requires the prior written approval of COMSFOR." The ITP contains no further explanation or guidelines as to how to implement these two provisions, and this lack of clarity contributed to the applicant's belief that he was not removed from position and service by the COMSFOR, but rather by the Federation of BiH Ministry of Defence. Additionally, as mentioned above in paragraphs 20, 23 and 24, the applicant was not informed in any capacity of the decision of the COMSFOR, or even aware of the proceedings against him in this regard. In the case at hand, the Chamber notes that it is not apparent as to which provision of the ITP formed the basis for the removal of the applicant. Moreover, the Chamber notes with concern that the ITP lacks clarity as to the procedure by which an officer is removed from position and service, which further contributed to the lack of legal certainty in the present case.

139. The Chamber finds that the manner in which the Election Commission and the Court of Bosnia and Herzegovina relied, in issuing their decisions, on a decision whose actual existence has remained a mystery, but which they certainly did not obtain a copy of, defies all notions of expected procedural fairness. Further, the applicant's inability to have his claim seriously considered by the Election Commission and the Court of Bosnia and Herzegovina deprived the applicant of the procedural safeguards that should have been afforded to him. Therefore, the Chamber finds that the proceedings whereby the applicant was banned from participating in the elections were lacking in all procedural fairness and legal certainty and can therefore not be considered proportional to the aim sought.

2. Conclusion on the merits

140. In conclusion, the Chamber finds that Bosnia and Herzegovina has violated the applicant's right to stand for elections as guaranteed by Article 3 of the First Protocol to the Convention.

VIII. REMEDIES

141. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breach of the Agreement.

142. In his application, the applicant requests compensation for material damages in the amount of lost salary of 1,800 Convertible Marks, (*Konvertibilnih Maraka*, "KM") monthly since November 2000 until the time of filing the application, which amounts to 43,200 KM. He also requests non-pecuniary damages in the amount of 20,000 KM for being discharged from his duties and because he could not participate in the General Elections in 2002. At the public hearing, the applicant amended his compensation claim to reflect his lost salary of 1,800 KM from the period December 2000 until the present, which amounts to 61,200,00 KM. The applicant furthermore added a claim for compensation for legal costs in the amount of 2,000 KM.

143. In regard to the applicant's compensation claim for lost salaries, the Chamber notes that it did not find that the applicant's removal from service violated the Agreement and therefore rejects the applicant's request for compensation for material damages in this regard.

144. The Chamber has, however, established that Bosnia and Herzegovina violated the applicant's rights under Article 3 of the First Protocol to the Convention. Considering that the violation of Article 3 of the First Protocol to the Convention arises from the decision of the Election Commission of 12 June 2002 and the decision of the Court of Bosnia and Herzegovina of 5 July 2002, the Chamber considers it appropriate to order the respondent Party to take, by 7 February 2004, all necessary steps to annul these two decisions.

145. In recognition of the moral damages the applicant suffered due to his inability to participate in the General Elections in 2002, the Chamber will order Bosnia and Herzegovina to publish this decision in its Official Gazette by 7 February 2004.

146. Moreover, the Chamber will order Bosnia and Herzegovina to pay to the applicant the sum of 5,000 KM in recognition of the sense of injustice he has suffered as a result of the violation of Article 3 of the First Protocol to the Convention. The sum awarded in this paragraph shall be paid to the applicant by 7 December 2003.

147. Given the applicant's legal costs in the proceedings before the Chamber, the Chamber will further award monetary compensation in the amount of 2,000 KM for legal costs, which shall be paid to the applicant by 7 December 2003. The Chamber dismisses the remainder of the applicant's compensation claims.

148. The Chamber will further award simple interest at an annual rate of 10% (ten per cent) on the sum awarded in paragraphs 146 and 147 above or any unpaid portions thereof as of the date of expiry of the one-month period set in the same paragraph.

IX. CONCLUSIONS

149. For the above reasons, the Chamber decides,

1. unanimously, to declare the application inadmissible against the Federation of Bosnia and Herzegovina in relation to the complaints under Article 6 of the European Convention on Human Rights;

2. unanimously, to declare the application inadmissible against the Federation of Bosnia and Herzegovina in relation to the complaints under Article 13 of the European Convention on Human Rights in connection with Article 6 of the European Convention on Human Rights;

3. unanimously, to declare the application inadmissible in relation to the complaint under Article 25 of the International Covenant on Civil and Political Rights;

4. unanimously, to declare the application inadmissible in relation to the complaint of discrimination in connection with Article 25 of the International Covenant on Civil and Political Rights;

5. unanimously, to declare the application inadmissible in relation to the Federation of Bosnia and Herzegovina under Article 3 of the First Protocol to the European Convention on Human Rights;

6. unanimously, to declare the application admissible in relation to Bosnia and Herzegovina under Article 3 of the First Protocol to the European Convention on Human Rights;

7. by 12 votes to 2, that Bosnia and Herzegovina has violated the right of the applicant to run for elections within the meaning of Article 3 of the First Protocol to the European Convention on Human Rights, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

8. by 12 votes to 2, to order Bosnia and Herzegovina to take all steps, at the latest by 7 February 2004, to annul the decision of the Election Commission of 12 June 2002 and the decision of the Court of Bosnia and Herzegovina of 5 July 2002;

9. by 12 votes to 2, to order Bosnia and Herzegovina to publish this decision in the Official Gazette of Bosnia and Herzegovina no later than 7 February 2004;

10. by 9 votes to 5, to order Bosnia and Herzegovina to pay the applicant the sum of 5,000 (five thousand) Convertible Marks (*Konvertibilnih Maraka,* "KM") by way of compensation for non-pecuniary damages, no later than 7 December 2003;

11. by 12 votes to 2, to order Bosnia and Herzegovina to pay to the applicant, by 7 December 2003, the sum of 2,000 (two thousand) Convertible Marks (*Konvertibilnih Maraka,* "KM") as compensation for costs of legal representation before the Chamber;

12. by 11 votes to 3, to order Bosnia and Herzegovina to pay simple interest at the rate of 10 % (ten per cent) per annum over the sum specified in conclusion nos. 10 and 11 or any unpaid portion thereof as from the date of expiry of the above-mentioned one-month period until the date of settlement in full; and

13. unanimously, to order Bosnia and Herzegovina to report to the Chamber, or its successor institution (the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina), on the steps taken by it to comply with these orders by 7 February 2004.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex Partly dissenting opinion of Mr. Dietrich Rauschning

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Dietrich Rauschning.

PARTLY DISSENTING OPINION OF MR. DIETRICH RAUSCHNING

1. I disagree with the Chamber's conclusion no. 7 "that Bosnia and Herzegovina has violated the right of the applicant to run for elections within the meaning of Article 3 of the First Protocol" to the Convention and consequently also with conclusions nos. 8 to 12.

2. From an examination of the case file, I underline the following essential facts: The applicant was discharged in spring 2001 from his position as a Lieutenant General of the Federation of BiH Army after his involvement in the Croat movement in March 2001 in which he left his post in common action with more than 7,000 Bosnian Croat troops in support of the call for self-rule, following the announcements of the HDZ (see paragraphs 1, 21 of the decision). He was dismissed with the co-operation of the Minister of Defence of the Federation of BiH and the SFOR Commander, who approved the dismissal in a letter which was received by the Ministry on 20 June 2001.

3. The applicant applied to the Election Commission for certification as an independent candidate for the general elections in Bosnia and Herzegovina in 2002. Upon the request of the Election Commission, the SFOR Commander notified the Commission on 13 May 2002, that a number of officers were "suspended or removed by action of the COMSFOR"; this letter states that the applicant was removed on 19 June 2001. The Election Commission requested additional information on the personal data of the applicant, and SFOR transmitted this data in a second letter received on 29 May 2002.

4. The Election Commission rejected the applicant's application for certification as an independent candidate in its decision of 6 June 2002, which was confirmed on review on 12 June 2002. The Court of Bosnia and Herzegovina rejected the applicant's appeal against these decisions in its decision of 5 July 2002. In its reasoning, the Court of Bosnia and Herzegovina refers to the letter of COMSFOR to the Election Commission of 29 May 2002 and to the provisions of the election law as amended. It states as a final reason: "Namely, according to the stated decision, no former or present military official that was replaced based on Chapter 14 of the Guidelines to the Parties, issued by COMSFOR in accordance with Article VI paragraph 5 of Annex I.A of the General Framework Agreement for Peace", can run for the elections.

5. I agree with the reasoning of the Chamber that "the ban on standing for elections for former military officials removed pursuant to Chapter 14 of the ITP pursues a legitimate aim" (see paragraph 128 of the decision). I support as well the statement that the specific application of Article 19.9A of the Election Law in the case at hand served a legitimate aim, recalling that the applicant "was involved in a movement which wished to institute 'self-rule' of the Croat community in Bosnia and Herzegovina, activities which are in direct contravention to the General Framework Agreement" (see paragraph 129 of the decision). On this basis the Chamber also concludes that the nature and severity of the ban are sufficiently circumscribed in the law so as to be proportionate to the aims sought (see paragraph 131 of the decision).

6. This reasoning presupposes that the requirements to apply the ban according to Article 19.9A of the Election Law have been met, namely, that the applicant has been removed from office pursuant to Chapter 14 of the ITP (see paragraph 39 of the decision). Article 19.9A of the Election Law does not set as a condition that the person in question is discharged *by* COMSFOR; rather, the ban follows *ex lege* the removal *from service pursuant to Chapter 14* of the ITP. All the participants in the proceedings before the Chamber, including the applicant, agree that the applicant has been discharged from his military position. No one contests that this was done in agreement between the Ministry of Defence and COMSFOR. Neither the Election Law, Article 19.9A, nor Chapter 14 of the ITP requires that the act of dismissal is itself performed by COMSFOR. The applicant has been dismissed after being involved in "activities which are in direct contravention to the General Framework Agreement and which threaten the substance of the peace process" (see paragraph 129

of the decision), thereby violating the standards set out under Chapter 14, 2e and 2f of the ITP. In other legal systems his acts would be considered as criminal acts of mutiny.

7. I cannot follow the reasoning of the Chamber in paragraph 132 *et seq.* in which it finds that the ban applied to the applicant cannot be considered proportional to the legitimate aim pursued due to its procedural shortcomings. After stating in paragraph 131 that the ban to participate in the elections was proportionate in the case at hand insofar as the nature and severity of the ban are concerned, it is difficult to understand how the actual procedure followed puts the proportionality anew into question. In the test for proportionality, the means or measures, *i.e.* the ban, must be weighed against the aims or the rights of the applicant. Thereafter, any flaws in the proceedings applying the measure may be considered in the question of whether the impugned act is in accordance with the law.

8. In paragraphs 132 to 134 of the decision, the Chamber criticises the procedure employed by the Federation of BiH in dismissing the applicant from his military position. But these procedural problems lie outside the scope to be considered on the merits: In conclusion no. 1 the complaints about the dismissal by the Federation of BiH are declared inadmissible under Article 6 of the Convention, and the application is not declared admissible against the Federation of BiH under any other aspect. The respondent Party for the impugned act, the rejection of the certification of the applicant, is only Bosnia and Herzegovina, and it is not responsible for dismissing the applicant.

9. No participant in the proceedings before the Chamber denies that the applicant has been dismissed from his military position, nor that this dismissal was brought about with the co-operation of COMSFOR and the Federal Ministry of Defence (see paragraph 6 above). In applying Article 19.9A of the Election Law, it is of no importance whether the act of dismissal was finally promulgated by COMSFOR or the respondent Party. The reasoning of the Court of Bosnia and Herzegovina, as the last instance to decide the question, cited above in paragraph 4, represents the legal situation. It follows *ex lege* from Article 19.9A of the Election Law that an officer discharged under Chapter 14 of the ITP cannot run for elections, and neither the Election Commission nor the Court of Bosnia and Herzegovina has any margin of appreciation in this question. In applying the ban it is not decisive whether or not the wording in the decisions of the organs of the respondent Party is precise.

10. The Chamber criticises the Election Commission and the Court of Bosnia and Herzegovina for not requesting a copy of the decision whereby the applicant was dismissed from military service of the Federation of BiH. They relied on the official notifications of COMSFOR of 13 and 29 May 2002 to the Election Commission stating that Lieutenant General Nedjeljko OBRADOVIĆ is one of the officers "suspended or removed by action of the Commander of Stabilization Force (COMSFOR) in accordance with the provisions of Chapter 14 of the Instructions to the Parties." I cannot share the conclusion of the Chamber in paragraph 139 of the decision that, under these circumstances, not to search for further evidence "defies all notions of procedural fairness" and that this leads to the consequence that rejecting the application for certification, as provided with binding force by the law, renders disproportionate the measure to ban the applicant from running in the elections.

11. I further disagree with conclusion no. 8 because I cannot find a violation of the applicant's rights. As stated above, it follows from Article 19.9A of the Election Law *ex lege* that the applicant is excluded from running in elections. After obeying the order of the Chamber under conclusion no. 8, based on finding a violation due to procedural shortcomings, the Election Commission will be obliged also in the future to reject any application of the applicant for certification as long as Article 19.9A of the Election Law is in force.

(signed)
Dietrich Rauschning