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

Case no. CH/98/835

Hamdo SULJOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 11 October 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
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 Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

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

I. INTRODUCTION

1. The case arises from the expropriation of a piece of land owned by the applicant, carried out by the Municipality of Novi Grad Sarajevo. The expropriation took place in 1985, encompassing both the land and several buildings that belonged to the applicant. However, the purpose of the expropriation, the construction of a residential settlement, was never put into practice.

2. At the outset, the applicant unsuccessfully tried to challenge the expropriation procedure. After it had become clear that the purpose of the expropriation would never be realised, the applicant requested that his land be given back to him. The myriad proceedings initiated by the applicant before the domestic administrative and judicial bodies and aimed at rectifying the expropriation have, taken together, lasted for more than 17 years.

3. The application raises issues under Article 6 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 5 January 1998. The applicant is represented by Ms. Hanka Suljović.

5. In his application, the applicant requested that the Chamber order the respondent Party, as a provisional measure, to annul all decisions of domestic administrative and judicial organs pertaining to his land. On 10 September 1998, the Chamber decided not to issue such an order.

6. On 18 December 2002, the application was transmitted to the respondent Party. Observations of the Federation of Bosnia and Herzegovina were received on 19 February and 28 February 2003. The applicant sent submissions on 26 May, 30 September and 18 November 1998, on 7 July and 19 December 2000, on 14 May and 21 August 2001, on 3 January, 25 February, 5 April, 24 June, 2 July and 5 August 2002, and on 11 April 2003.

7. The Chamber deliberated on the admissibility and merits of the case on 4 December 2002, and on 4 September and 11 October 2003. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Before the entry into force of the General Framework Agreement

1. The expropriation procedure

8. On 17 November 1985, the Municipal Secretariat for Housing, Property, Legal Affairs and Cadastre of the Municipality of Novi Grad Sarajevo (*Opštinski sekretarijat za stambene, imovinsko-pravne poslove i katastar*; "the Municipality") issued a decision to expropriate real property belonging to the applicant, registered as cadastral lot no. 1812 in the cadastral books of Novo Sarajevo III. The expropriated land was intended to be used for the construction of a residential settlement named "Vojničko Polje". It appears that some of the buildings erected on the applicant's land lacked a valid building permit, and that therefore, compensation only was awarded in relation to those buildings that were constructed lawfully. It was also stipulated that the applicant should be provided with replacement accommodation in order to meet his housing needs. The applicant appealed against this decision.

9. On 6 May 1986, the Republic Administration for Property and Legal Affairs (*Republička uprava za imovinsko-pravna poslova*) of the Socialist Republic of Bosnia and Herzegovina ("the Republic Administration") rejected the applicant's appeal against the decision of 17 November 1985 on the grounds of wrongfully established facts as ill-founded.

10. On 15 July 1986, the applicant and the Municipality reached a partial agreement on compensation. On 27 January 1987, the Basic Court II of Sarajevo made a final ruling on the issue, deciding to award to the applicant the sum of roughly 1,000,000 Yugoslav Dinars.

11. The applicant moved out of his home on 8 December 1987, and subsequently, all buildings on his land were pulled down. However, the settlement project originally envisaged by the expropriation was never realised.

2. The de-expropriation procedure

12. On 8 January 1991, the applicant submitted a request to the Municipality with a view to being returned the land that was expropriated from him in 1985 (so-called "de-expropriation"). On 1 July 1991, the Municipality rejected the request. On 29 August 1991, the Republic Administration, as the second instance administrative body, confirmed the Municipality's decision.

3. The request for renewal of the expropriation procedure

13. Also on 8 January 1991, the applicant requested the Republic Administration to renew proceedings in his case, *i.e.*, to re-conduct proceedings that were terminated by the decision of the Republic Administration of 6 May 1986 (see paragraph 9 above). On 3 September 1991, the Republic Administration rejected his request.

14. After the initiation of an administrative dispute, on 30 January 1992, the Supreme Court of Bosnia and Herzegovina accepted the applicant's request and quashed the Republic Administration's decision of 3 September 1991. The Supreme Court reasoned that the purpose of the preceding expropriation, the construction of a residential settlement, had not been met to date and that according to the law, the decision on expropriation of 17 November 1985 should be considered null and void. The Republic Administration was instructed to deal with the case again, taking into account this finding.

B. After the entry into force of the General Framework Agreement

15. On 25 February 1996, the Republic Administration complied with the decision of the Supreme Court of Bosnia and Herzegovina issued on 30 January 1992 and annulled its own decision of 3 September 1991, in which it had rejected the proposal to re-conduct expropriation proceedings. The Republic Administration invited the applicant to specify his claim, upon which a new decision would be reached.

16. Thereafter, the applicant pointed out that he sought both the renewal of expropriation proceedings and the de-expropriation of his land. On 5 April 1996, the Republic Administration rejected both claims. The applicant initiated an administrative dispute against this decision before the Supreme Court of the Federation of Bosnia and Herzegovina.

17. On 17 October 1996, the Supreme Court of the Federation of Bosnia and Herzegovina accepted the applicant's lawsuit insofar as his request for de-expropriation was concerned, but it rejected the complaint concerning the refusal to renew expropriation proceedings. In its judgment, the Supreme Court found that the Republic Administration was not competent to decide on the matter, and ordered that the first instance organ, *i.e.*, the Municipality, deal with the issue of de-expropriation of the applicant's land. It appears that the Municipality did not take any steps in that direction in the following time.

18. The applicant, unsatisfied with the course of events, then decided to initiate an administrative dispute against the decision of the Republic Administration of 29 August 1991, which concerned the de-expropriation of his land (see paragraph 12 above). On 18 March 1998, the Supreme Court of the Federation of Bosnia and Herzegovina rejected the applicant's lawsuit as ill-founded. On 12 April 1999, the Director of the Federal Administration, which is the legal successor of the former Republic Administration, wrote a letter to the applicant, stating that in his view, the rejection of the applicant's request for de-expropriation had become final and binding by the mentioned judgment of the Supreme Court of 18 March 1998.

19. On 4 November 1999, the Municipal Court II in Sarajevo rejected the applicant's claim to obtain additional compensation for his real estate that was expropriated in 1985.

20. On 2 November 2000, the applicant requested the Municipality to return to him the land that was subject to expropriation in 1985. As neither the Municipality nor the Federal Administration responded to his submissions, he initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina with a "silence of administration" complaint. On 9 August 2001, the Supreme Court accepted his claim and ordered the administrative organ of first instance to issue a decision on the applicant's request within 30 days.

21. On 25 December 2001, the Federal Administration rejected the applicant's request as ill-founded. Against this decision, the applicant initiated another administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina, which on 6 March 2002 decided in the applicant's favour, quashed the decision of 25 December 2001, and returned the case to the Federal Administration for renewed consideration.

22. On 24 June 2002, the Federal Administration rejected the applicant's claim to nullify the decision of the Republic Administration of 6 May 1986, in which the applicant's appeal against the expropriation of his real estate had been turned down (see paragraph 9 above). Against this decision, an administrative dispute before the courts could be instituted. It appears that the applicant has not initiated such proceedings.

IV. RELEVANT LEGISLATION

A. The Law on Expropriation

23. Article 32 of the Law on Expropriation (Official Gazette of the Socialist Republic of Bosnia and Herzegovina Nos. 12/87 – consolidated text and 38/89 taken over as a law of the Federation of Bosnia and Herzegovina according to Article IX(5)(1) of its Constitution) sets out the conditions under which a decision on expropriation can be annulled. It was amended in 1994 (Official Gazette of the Republic of Bosnia and Herzegovina Nos. 11/94 and 15/94) and reads, in relevant part:

> "…
> (4) A valid procedural decision on expropriation shall be annulled following a request of the former owner of the expropriated real property, if the beneficiary of the expropriation has not performed, pursuant to the nature of the building, any considerable work on that building within three years since the procedural decision became valid.
> …
> (7) The request for the annulment of the procedural decision on expropriation may be filed by the former owner after the expiry of three years from the date on which the procedural decision became valid, until the beneficiary of the expropriation has performed considerable works."

24. Article 67 of the Law on Expropriation reads:

> "(1) In case of expropriation of a building or a particular part of a building, which was built without the approval of the competent organ, a former owner is not entitled to compensation for such real property.
> …
> (2) As an exception to the provision of the previous paragraph, the owner of a residential building or a particular part of a residential building built before 15 February 1968, which he or she occupies alone or with the members of his/her family, is entitled to compensation for that building or a particular part of the building and to be provided with appropriate accommodation.
> …"

The provisions of this Article ceased to be in force by a decision of the Constitutional Court of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Social Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" – no. 4/90) and by a decision of the Constitutional Court of the Federal Republic of Yugoslavia (OG SRBiH no. 20/91 and Official Gazette of the Socialist Federal Republic of Yugoslavia no. 45/91).

B. The Law on Administrative Procedure

25. Under Article 216 of the Law on Administrative Procedure (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – Nos. 2/98 and 48/99), the competent first instance administrative organ has to issue a decision within 30 days upon receipt of a request. Paragraph 3 of Article 216 provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit (appeal against the "silence of the administration").

26. Article 243 paragraph 2 of the same Law provides that the second instance administrative body shall conduct the proceedings and solve the matter by its own decision if it finds that the reasons for which a decision was not made by the first instance organ within the deadline of 30 days were not justified. Exceptionally, if the second-instance body finds that the proceedings will be faster and more efficiently solved by the first-instance body, then it shall order that body to do so.

C. The Law on Administrative Disputes

27. Article 1 of the Law on Administrative Disputes (OG FBiH Nos. 2/98 and 8/00) provides that the courts shall decide in administrative disputes on the lawfulness of second-instance administrative acts concerning rights and obligations of citizens and legal persons.

28. Article 22 paragraph 3 of the same Law provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time-limit, whether the appeal to it was against a decision or against the first instance organ's silence.

V. COMPLAINTS

29. The applicant alleges that he was unlawfully deprived of his property, that he was not given back his land and that the proceedings in his case were not conducted within a reasonable time. He asks the Chamber to order the respondent Party to award him 260,000 KM and, in addition, interest at the rate of 12% on this amount as of 1 January 1989.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

30. On 19 February 2003, the Federation of Bosnia and Herzegovina sent written observations on the admissibility and merits of the application. The respondent Party claims that the applicant received compensation as provided for in the judgment of the Basic Court II in Sarajevo of 27 January 1987. Furthermore, it suggests that the application be declared inadmissible *ratione temporis* as the complaints of the applicant relate to events taking place before 14 December 1995. Alternatively, the Federation proposes to declare the application inadmissible for non-compliance with the six-month rule, considering that the application was filed in 1998, whereas the decision on expropriation of 17 November 1985 and the decision of 1 July 1991, which rejected the applicant's request for de-expropriation, should be considered the final decisions upon which the applicant's complaints are based.

31. As regards the allegation that proceedings in the applicant's case have lasted for an excessive amount of time, the Federation claims that all administrative bodies and courts the applicant has turned to have dealt with his requests not only with great patience, but also within a reasonable time. As regards Article 1 of Protocol No. 1 of the Convention, the Federation points out

that its legal system, in particular Article 32 of the Law on Expropriation, strikes a fair balance between state interests and those of former owners, and that the proceedings in the applicant's case were conducted strictly according to law.

B. The applicant

32. The applicant claims that he did not receive fair compensation following the expropriation of his land and he maintains all his complaints.

VII. OPINION OF THE CHAMBER

A. Admissibility

33. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Concerning events before 14 December 1995

34. The Chamber notes that the applicant's complaints in relation to the expropriation of his land relate to proceedings before the organs of the then existing Socialist Republic of Bosnia and Herzegovina and thus to events which occurred before 14 December 1995, which is the date when the Agreement entered into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (see case no. CH/96/3, *Medan v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, decision on admissibility of 4 February 1997, Decisions on Admissibility and Merits 1996-1997). The Chamber must confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date (see case no. CH/96/30, *Damjanović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997).

35. Consequently, the applicant's complaints insofar as they relate to events before 14 December 1995 must be declared inadmissible *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement. Insofar as the applicant complains that his rights have been violated after the entry into force of the Agreement, his complaints are within the competence of the Chamber *ratione temporis* and are not incompatible with the Agreement.

2. Requirement to exhaust effective domestic remedies

36. The Chamber notes that after 14 December 1995, the applicant has repeatedly sought to rectify the expropriation of 1985 in de-expropriation proceedings. It is noteworthy that the Supreme Court of the Federation of Bosnia and Herzegovina dealt with the matter on four occasions, and three times, the Supreme Court returned the case to the administrative bodies for renewed consideration.

37. Furthermore, the Chamber observes that on 24 June 2002, the Federal Administration rejected the applicant's request to nullify the decision of the Republic Administration of 6 May 1986. However, this decision could be challenged in an administrative dispute, which the applicant decided not to do. The applicant has not stated the reason why he did not initiate such proceedings, in particular, he has not shown that this remedy was ineffective. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies in relation to his de-expropriation request. The Chamber therefore decides to declare this part of the application inadmissible.

38. As regards the applicant's complaint that the proceedings conducted in his case after

14 December 1995 have lasted for an unreasonable amount of time, the Federation of Bosnia and Herzegovina has not sought to claim that there is any remedy available to the applicant against the failure of the domestic administrative organs to issue a final decision in his proceedings, and the Chamber for its part is not aware of any such remedy.

39. Accordingly, the Chamber does not consider that there is any effective remedy available for the purpose of the applicant's complaint with regard to the length of proceedings that he should be required to exhaust. It follows that this part of the application will not be declared inadmissible due to non-exhaustion of domestic legal remedies.

3. Conclusion as to admissibility

40. No other grounds for declaring the case inadmissible have been put forward or are apparent. Accordingly, the application will be declared admissible insofar as it relates to events after 14 December 1995 with regard to the complaint that the proceedings in the applicant's case have not been conducted within a reasonable time. The remainder of the application will be declared inadmissible.

B. Merits

41. Under Article XI of the Agreement, the Chamber must next address the question whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for by the Convention and the other international agreements listed in the Appendix to the Agreement.

42. The Chamber will now examine the question whether there has been a violation of Article 6 of the Convention in that the administrative proceedings in the applicant's case have not been determined within a reasonable time. The relevant part of Article 6 paragraph 1 of the Convention provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time ..."

43. The Chamber notes that the applicant's complaint, as relates to the conduct of the domestic authorities and the way they have dealt with his case, concerns his request to reverse the expropriation of his land in 1985 through the renewal of proceedings or so-called de-expropriation. The European Court of Human Rights has held that also administrative proceedings can be viewed as a "determination of his civil rights", within the meaning of paragraph 1 of Article 6 of the Convention, if their outcome is decisive for a person's rights under private law (*Ringeisen v. Austria*, judgment of 16 July 1971, paragraph 94, Series A no. 13). Accordingly, the Chamber finds that the proceedings complained of by the applicant fall within the scope of paragraph 1 of Article 6 of the Convention.

44. In establishing the length of the proceedings, the Chamber has to determine the period of time relevant for the guarantee provided by paragraph 1 of Article 6 of the Convention. The Chamber reiterates that, considering its competence *ratione temporis,* it can assess the reasonableness of the length of proceedings only with regard to the period after 14 December 1995. It may, however, take into account at what stage the proceedings had reached and how long they had lasted before that date (see case no. CH/00/4295, *Osmanagić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 5 March 2002, Decisions January-June 2002, paragraph 49).

45. The Chamber recalls that on 25 February 1996, the Republic Administration complied with the Supreme Court judgment issued on 30 January 1992, in which the decision rejecting the applicant's request to renew proceedings was quashed. Thereafter, the administrative bodies have repeatedly rejected the applicant's claim or not reacted to his requests at all. The Chamber notes in particular that, contrary to the statement of the Federal Administration on 12 April 1999 (see paragraph 18 above), the applicant's de-expropriation request was not turned down in a final and binding way by the judgment of the Supreme Court of 18 March 1998, but that proceedings continued until a decision of

the Federal Administration was issued on 24 June 2002. The length of the proceedings to be considered by the Chamber thus covers more than six years, and they had already been pending for five years when the Agreement entered into force.

46. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and the other circumstances of the case (see case no. CH/97/54, *Mitrović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with further references to the case-law of the European Court of Human Rights).

47. The Chamber deems that the mere facts underlying the expropriation of the applicant's land (see paragraph 8 above) are not exceedingly complex in nature. The same holds true for the legal provisions governing the de-expropriation of such land in case the expropriation purpose is not met (see paragraphs 23 and 24 above). However, there appears to be a material overlap and an inability of the domestic authorities to differentiate between or to deal with the applicant's multiple requests for renewal of the expropriation proceedings, for de-expropriation, and in relation to the compensation issue. In any event, the Chamber finds that the domestic procedural system facilitates the lodging of claims substantially identical to previously decided matters, thus not only giving the applicant the impression that he might obtain a favourable decision, but also hampering a final and binding settlement of the dispute at hand.

48. The Chamber also notes that on three occasions the applicant initiated an administrative dispute against decisions denying his request for de-expropriation, and every time the Supreme Court of the Federation of Bosnia and Herzegovina accepted the lawsuit and quashed the administrative decisions. This indicates either a systematic failure by the administrative organs to comply with the decisions of the Supreme Court, or a failure of the Supreme Court to issue judgments that guide the administration towards a correct solution of the applicant's case.

49. Accordingly, the Chamber cannot regard the period of time that elapsed in the instant case as reasonable. It follows that there has been a violation of the applicant's rights, as guaranteed by paragraph 1 of Article 6 of the Convention, to have his civil rights determined in a reasonable time.

VIII. REMEDIES

50. Under Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found.

51. In the present case, the Chamber finds it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of one thousand (1000) Convertible Marks ("*Konvertibilnih Maraka*"), within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, as compensation for non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

52. Additionally, the Chamber further awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

53. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as directed against the Federation of Bosnia and Herzegovina and relating to the length of the domestic proceedings conducted after 14 December 1995;

2. unanimously, to declare inadmissible the remainder of the application;

3. unanimously, that there has been a violation of the applicant's right to a determination of his civil rights within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, one thousand (1,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

5. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

6. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or its successor institution no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above order.

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

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel