DECISION ON ADMISSIBILITY AND MERITS

Case nos. CH/00/5963, CH/00/6539, CH/01/7069, CH/01/7091 and CH/01/8074

Rašida OMERBAŠIĆ, Refika BAJRAMOVIĆ, Rifat JAŠAREVIĆ, Sakib MAČKOVIĆ and Ifeta ARADAN

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 4 November 2004 with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned applications introduced to the Human Rights Chamber for Bosnia and Herzegovina 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;

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement, and Rules 32, 50, 54, 56, and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicants, who are of Bosniak origin, lived in Bosanski Brod prior to the armed conflict in Bosnia and Herzegovina.[1] The applications share many similarities: in May 1998 the Municipality Srpski Brod issued procedural decisions on the destruction of the applicants' homes in accordance with Article 117 of the Law on Physical Planning, and these decisions were never delivered to them, nor were temporary representatives appointed on their behalf in these proceedings, as provided for by law. Shortly after the issuance of these decisions, their homes were demolished. The applicants assert that the houses were not so damaged as to require their destruction, and in fact, the Municipality Srpski Brod intentionally further damaged them, in order to require their total demolition. In total 18 houses located at the very centre of the city were demolished on the ground that the houses were uninhabitable. The houses were owned by Bosniaks and Croats, and one was owned by the Islamic Community. According to the applicants' allegations, the Municipality Srpski Brod intends to start construction of a hotel where the houses used to stand because the location has a very valuable position in the city centre.

2. The Commission considered the same underlying events in case no. CH/00/5694, *Zlata Lošić and 5 Others v. The Republika Srspka*, decision on admissibility and merits of 10 September 2004, where it found that the respondent Party violated the rights of the applicants as protected by Articles 6 and 8 of the European Convention and discriminated against the applicants in the enjoyment of their property rights.

3. The present applications raise issues in connection with Articles 6 and 8 of the European Convention on Human Rights ("the Convention"), Article 1 of Protocol No. 1 to the Convention, and Article II(2)(b) of the Agreement.

4. On 10 September 2004 and 4 November 2004 the Commission discussed the admissibility and merits of the applications, and it adopted the present decision on the latter date. Considering the similarity between the facts of the cases and the complaints of the applicants, the Commission decided to join the present applications in accordance with Rule 32 of the Commission's Rules of Procedure on the same day it adopted the present decision.

[1] The applicants uses the names "Bosanski Brod", "Srpski Brod" and "Brod", while the respondent Party uses the name "Srpski Brod", all referring to the same town. Bosanski Brod was the pre-war name of the town. During the armed conflict, Bosanski Brod was under Serb control. The Law on Territorial Organization and Local Self-Government of Republika Srpska, Article 11, issued in the Official Gazette of the Republika Srpska no. 11/96 established the municipalities in the Republika Srpska. One of those municipalities was the Municipality "Brod", the pre-war Bosanski Brod. Amending Article 11 of the of the Law on Territorial Organization and Local Self-Government, the Assembly of the Republika Srpska changed the name of town to "Srpski Brod". This decision was published in the Official Gazette of the Republika Srpska no. 6/95. In March 2004, the Constitutional Court of Bosnia and Herzegovina held that the part of Article 11 of the Law on Territorial Organization and Local Self-Government, and Articles 1 and 2 of the Law on the Town of Srpsko Sarajevo, in regard to certain municipality names (e.g., Srpsko Sarajevo, Srpski Drvar, Srpski Sanski Most, Srpski Mostar, Srpsko Goražde, Srbinje, Srpski Ključ, Srpska Kostajnica, Srpski Brod, Srpska Ilidža, Srpsko Novo Sarajevo, Srpski Stari Grad, and Srpsko Orašje), are not in conformity with Article II.4 of the Constitution of Bosnia and Herzegovina, in conjunction with Articles II.3 and II.5. The Constitutional Court of Bosnia and Herzegovina ordered the National Assembly of the Republika Srpska to harmonize these laws with the Constitution of Bosnia and Herzegovina within three months from the date of publication of its decision in the Official Gazette of Bosnia and Herzegovina. The Republika Srpska having not complied with its decision, on 21 September 2004 the Constitutional Court issued a decision changing the name of certain towns, and "Srpski Brod" was changed to "Bosanski Brod" (Official Gazette of Bosnia and Herzegovina no. 46/04 of 21 October 2004). Throughout this decision, therefore, Bosanski Brod and Srpski Brod will be used interchangeably, depending on the context.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

A. Case no. CH/00/5963, Rašida OMERBAŠIĆ

5. The application was introduced to the Chamber on 23 October 2000 and registered on the same day. The applicant is represented before the Chamber and the Commission by Nedreta Omerbašić.

6. On 26 July 2004 the Commission transmitted the application along with two other similar applications to the respondent Party for its observations on the admissibility and merits under Articles 6 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Article II(2)(b) of the Agreement. Upon transmitting the application, the Commission requested the respondent Party to submit the relevant regulatory plans, to inform it of the exact date of the demolition of the house, to provide the procedural decision ordering the demolition, and to provide evidence that this procedural decision was submitted to the applicant.

7. On 30 August 2004 the respondent Party submitted its observations on the admissibility and merits of the application, and attached the 18 May 1998 procedural decision on the demolition of the applicant's house, minutes taken on 26 February 1998 on the category and degree of damage of the house, photos and sketches of the house immediately before its destruction, and the cadastre record excerpt. The respondent Party submitted no evidence of the procedural decision having been delivered to the applicant.

8. The respondent Party's written observations were transmitted to the applicant on 6 September 2004. The applicant replied on 28 September 2004.

9. On 24 September 2004 the Commission addressed a letter to the respondent Party in relation to three similar applications requesting documentation and clarification on a number of factual issues that it had not yet clarified, such as the exact date of destruction of the houses, whether the provisional measure issued in some cases on 9 September 2000 is still in force, and evidence that houses owned by persons of Serb origin in Bosanski Brod were also demolished by the Municipality. The respondent Party partly replied on 26 October 2004.

B. Case no. CH/00/6539, Refika BAJRAMOVIĆ

10. The application was introduced to the Chamber on 5 December 2000 and registered on the same day. The applicant is represented by Mr. Jadranko Hadžisejdić, a lawyer practicing in Bosanski Brod.

11. On 26 July 2004 the application was transmitted to the respondent Party for its observations on the admissibility and merits of the application in connection with Articles 6 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Article II(2)(b) of the Agreement. Upon transmitting the application, the Commission requested the respondent Party to submit the relevant regulatory plans, to inform it of the exact date of the demolition of the house, to provide the procedural decision ordering the demolition, and to provide evidence that this procedural decision was submitted to the applicant.

12. On 26 August 2004 the respondent Party submitted its observations on the admissibility and merits of the application and attached the 8 September 2000 procedural decision on issuance of a provisional measure and the 3 November 2000 procedural decision of the District Court in Doboj.

13. The respondent Party's written observations were transmitted to the applicant on 6 September 2004. The applicant submitted her reply on 13 October 2004.

14. On 24 September 2004, the Commission addressed a letter to the respondent Party in relation to three similar applications requesting documentation and clarification on a number of factual issues that it had not yet clarified, such as the exact date of destruction of the houses, whether the provisional measure issued in some cases on 9 September 2000 is still in force, and evidence that houses owned by persons of Serb origin in Bosanski Brod were also demolished by the Municipality. The respondent Party partly replied on 26 October 2004.

C. Case no. CH/01/7069, Rifat JAŠAREVIĆ

15. The application was submitted to the Chamber on 22 January 2001 and registered on 2 February 2001. The applicant is also represented by Mr. Jadranko Hadžisejdić, a lawyer practicing in Bosanski Brod.

16. On 26 July 2004 the application was transmitted to the respondent Party for its observations on the admissibility and merits of the application in connection with Articles 6 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Article II(2)(b) of the Agreement. Upon transmitting the application, the Commission requested the respondent Party to submit the relevant regulatory plans, to inform it of the exact date of the demolition of the house, to provide the procedural decision ordering the demolition, and to provide evidence that this procedural decision was submitted to the applicant.

17. On 11 August 2004 the Commission sent a letter to the applicant requesting him to submit further documentation related to his application. The applicant's representative responded to the Commission's letter on 24 August 2004.

18. On 26 August 2004 the respondent Party submitted its observations on the admissibility and merits, but did not submit the requested documentation. The submission was transmitted to the applicant on 6 September 2004. The applicant replied on 13 October 2004.

19. On 24 September 2004, the Commission addressed a letter to the respondent Party in relation to three similar applications requesting documentation and clarification on a number of factual issues that it had not yet clarified, such as the exact date of destruction of the houses, whether the provisional measure issued in some cases on 9 September 2000 is still in force, and evidence that houses owned by persons of Serb origin in Bosanski Brod were also demolished by the Municipality. In the case of Rifat Jašerević, the Commission specifically asked for the procedural decision on removal of the house from the Land Registry. The respondent Party partly replied on 26 October 2004.

D. Case no. CH/01/7091, Sakib MAČKOVIĆ

20. The application was introduced to the Chamber on 1 February 2001 and registered on 23 February 2001.

21. On 26 August 2004 the application was transmitted to the respondent Party for its observations on the admissibility and merits in connection with Articles 6 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Article II(2)(b) of the Agreement. Upon transmitting the application, the Commission requested the respondent Party to inform it of the exact date of the demolition of the house, to provide the procedural decision ordering the demolition, to provide evidence that this procedural decision was submitted to the applicant, and any procedural decision whereby the applicant's house was removed from the Land Registry books.

22. On 28 September 2004 the respondent Party submitted its observations on the admissibility and merits of the application, but did not submit any of the requested documentation. These observations were transmitted to the applicant on 1 October 2004. The applicant submitted his reply on 21 October 2004 and 27 October 2004.

23. Having not received any accompanying documentation, on 1 October 2004 the Commission again requested the respondent Party to provide documentation, including the procedural decision on demolition of the house, evidence that it was submitted to the applicant, value of the house prior to its demolition, date of demolition of the house, copy of the provisional measure request submitted to the First Instance Court in Derventa, evidence that the applicant received the 8 September 2000 decision and procedural decision removing the property from the Land Registry books. The respondent Party partly replied on 26 October 2004.

E. Case no. CH/01/8074, Ifeta ARADAN

24. The application was introduced to the Chamber on 19 November 2001 and registered on the same day.

25. On 26 November 2002 the Chamber decided to transmit the application to the respondent Party for its observations on admissibility and merits under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

26. On 3 January 2003 the applicant's son, Jasmin Aradan ("Mr. Aradan"), informed the Chamber that the applicant had died on 11 October 2002 and that he, as his mother's sole inheritor, wishes to maintain the application before the Chamber.

27. On 28 January 2003 the respondent Party submitted to the Chamber its observations on admissibility and merits of the application. Although not having been specifically requested, the respondent Party provided also provided observations in relation to discrimination. These observations were transmitted to the applicant's son on 21 March 2003. On 28 April 2003 Mr. Aradan submitted his response.

28. On 11 August 2004 the Commission sent a letter to Mr. Aradan requesting him to submit further documentation regarding the application, as well as the procedural decision on inheritance.

29. On 27 August 2004 the respondent Party submitted the procedural decision on demolition of the applicant's house issued on 10 April 1998, pictures of the house immediately before its destruction, and assessment of the value of the house prior to its destruction.

30. On 24 September 2004 the Commission addressed a letter to the respondent Party requesting documentation and clarification on a number of factual issues that it had not yet clarified. The respondent Party partly replied on 26 October 2004.

31. On 7 October 2004 Mr. Aradan submitted to the Commission requested documentation.

III. ESTABLISHMENT OF THE FACTS

A. Facts common in all cases

32. As stated above, the applications all stem from the demolition of the applicants' houses by the Municipality Srpski Brod in the spring of 1998. The procedural decisions on the demolition of the houses were issued in April and May 1998, although in the case of Sakib Mačković, the respondent Party has not submitted this procedural decision. In no case has the respondent Party shown that the procedural decisions on demolition of the houses were delivered to the applicants.

33. The Organisation for Security and Cooperation in Europe Mission to Bosnia and Herzegovina ("OSCE") became involved in assisting the owners of the demolished houses in seeking redress. Due to OSCE involvement, the applicants state that two lawyers from Sarajevo were appointed to represent them, Mr. Hadžiselimović and Mr. Pipić. Unfortunately both of these lawyers died while the proceedings were still pending. With the assistance of these legal

representatives, the applicants undertook a number of steps to seek the protection of their property rights, which are detailed below in each case.

34. On 22 December 1998, Z.S., an OSCE legal advisor, sent a letter to Mr. Hadžiselimović describing a meeting that OSCE had held with the Minister for Administration and Local Self-Management of the Republika Srpska (*Uprava i lokalnu samouprava Republike Srspke*) on 18 December 1998. OSCE requested the Ministry to investigate the case of the destruction of the 18 houses and highlighted that the owners of the houses did not participate in the proceedings, nor was a temporary representative appointed on their behalf, and there appeared to be no evidence obtained prior to demolition that the houses actually posed a threat to the health and safety of others. OSCE concluded that these events clearly indicate ethnic discrimination on the part of the municipality, in light of the fact that only the houses of Bosniaks and Croats were demolished.

B. Facts of the individual applications

35. A summary of the facts of each individual case follows. The Commission notes that it has sent many requests for documentation and clarification of facts, and the respondent Party has largely failed to provide clarification and supporting documentation.

1. Case no. CH/00/5964, Rašida OMERBAŠIĆ

36. The applicant lived in her home located at Trg slobode 11 (now Trg cara Dušana 11) in Bosanski Brod before the war. The applicant enjoyed the permanent right to use state-owned land marked as k.č. 1/196 in the land registry excerpt no. 900 (*zemljišna knjiga izvadak)* and on parcel no. k.č. 1/190, land registry excerpt no. 975 Cadaster Municipality Bosanski Brod. Together with the wife of her deceased brother, H.H., the applicant co-owned a house built on the land marked as parcel no. k.č. 1/686, with 2/3 share. The applicant submitted the land registry excerpt issued by the Land Registry Department within the Municipal Court in Odžak, the Federation of Bosnia and Herzegovina on 8 February 1999. The house was approximately 138 square meters in size.

37. On an unknown date during the armed conflict the applicant left Bosanski Brod and went to the Republic of Croatia, where she continues to live to this day.

38. On 26 February 1998 a Commission of the Municipal Secretariat for Physical Planning, Urbanism, and Housing-Utility Affairs of Srpski Brod made an assessment of the remaining value of the applicant's house, which amounted to 13,848 Deutsche Marks ("DEM").

39. On 18 May 1998 the Municipal Secretariat for Physical Planning, Urbanism, and Housing-Utility Affairs of Srpski Brod ("the Municipal Secretariat") issued a procedural decision ordering the demolition of the house of Rašida Omerbašić and other co-owners located at Cara Dušana Street. The order was based on Article 117 of the Law on Physical Planning of the Republika Srpska (see paragraph 110 below). The 18 May 1998 procedural decision was never delivered to the applicant. OSCE and the applicant's legal representative Mr. Hadžiselimović, went to the Municipality Srpski Brod and obtained the stated procedural decision.

40. On an unknown date the house was demolished.

41. On 10 June 1998, the applicant and H.H., represented by Mr. Hadžiselimović, filed a request for provisional measures to the First Instance Court in Derventa to ban construction on the land and to order appropriate experts to establish whether the destruction of their property was well-founded and in accordance with the law.

42. On 14 September 1998 the First Instance Court in Derventa (*Osnovni sud*) issued a procedural decision declaring itself not competent to decide on the request for provisional measures because it established that the applicants had no pending or previous court proceedings in this matter, and in the instance case the issuance of provisional measures should first be

addressed to the administrative organs. The applicant's representative filed an appeal against the 14 September 1998 procedural decision of the First Instance Court in Derventa. On 23 October 1998 the District Court in Doboj (*Okružni sud*) issued a procedural decision accepting the appeal, annulling the procedural decision, and returning the case to the first instance court for renewed proceedings.

43. On 30 October 1998 the applicant's representative addressed the Ministry for Administration and Local Self-Management of the Republika Srpska indicating to it the illegal work of the municipal organ and stressing that the competence of the stated Ministry was to overview the work of municipal organs and inform the RS Government about it. On 22 December 1998 the stated Ministry issued a procedural decision ordering the Municipal Secretariat to enable all parties, that is "owners of objects damaged in the war that were included in the regulatory plan of the Municipality Srpski Brod", to participate in the proceedings, and to issue an appropriate administrative act in accordance with the law after the proceedings have been conducted and factual background established.

44. On 4 December 1998 Mr. Hadžiselimović filed with the First Instance Court in Derventa a submission joining Omerović Nevzeta, Lošić Zlata, Lošić Amir, Lošić Sanela, Ćosić Salihudin, Mujkanović Kasim, Lukić Dragutin, Ćosić Muho and the Islamic Community to the applicant's and H.H.'s request for provisional measures. The applicant and the other owners requested the Court to order appropriate experts to establish whether the destruction of their property was well-founded and in accordance with the law. The First Instance Court scheduled a hearing for 11 January 1999, which, for unknown reasons, was not held,.

45. On 28 January 1999 the applicant and the other owners submitted a request to the President of the First Instance Court in Derventa to assign a judge to take evidence in their case and schedule a new public hearing, because the one scheduled for 11 January 1999 was never held.

46. On 1 February 1999 the First Instance Court in Derventa issued a procedural decision accepting the proposal to obtain evidence, and on 25 February 1999 scheduled a hearing for presentation of evidence.

47. On 25 February 1999 an oral hearing was held before the First Instance Court in Derventa. The representative of the applicant and the other owners stated that they had a meeting with the OSCE and Municipal Secretariat representative and that it was very likely that an out-of-court settlement could be reached. The applicant and the other owners again requested the taking of expert evidence on the destruction of their houses and assessment of its legality.

48. On 6 July 1999 in preparation for the next hearing, the applicant and the other owners filed a proposal to the First Instance Court in Derventa requesting that the case file and all procedural decisions be obtained from the Municipal Secretariat, and to summon an expert surveyor from the Municipality Srpski Brod, and an expert from the OSCE or some other international organization.

49. On 28 June 2000 the applicant filed a repossession request for her property to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"). The applicant has never received a decision upon her request nor has she been reinstated into her property. The applicant has not filed a request for repossession of the property before the competent municipal organ.

50. On 8 September 2000 the First Instance Court in Derventa issued a procedural decision forbidding the Municipality Srpski Brod to make any changes to the factual situation on the land, that is forbidding any construction or placing of temporary objects on the real estate owned or possessed by the applicant, H.H., Omerović Nezveta, Husnija Mačković, Amir Lošić and Sanela Antolović, Husein Ćosić, and the Islamic Community. In the reasoning, it is stated that the provisional measure will remain in force until these persons have achieved their rights they are

entitled to by the law, provided that they submit to the court, within 60 days, evidence that they have initiated proceedings for realization of their rights before the competent organ. The Court described the evidence it reviewed, and in particular highlighted that it accepted Land Registry excerpts and cadaster records from the Municipality Odžak in the Federation of Bosnia and Herzegovina, as it is well known that these records are no longer in the Municipality Srpski Brod.

51. On 20 September 2000 the Municipality Srpski Brod filed an appeal against the 8 September 2000 procedural decision. On 3 November 2000 the District Court in Doboj rejected this appeal as ill-founded.

52. On 14 December 2000 the Municipality Srpski Brod filed a request for review against the 3 November 2000 procedural decision of the District Court. The First Instance Court in Derventa rejected the request for review on 18 December 2000.

53. On 4 November 2002 the Republic Administration for Geodetic and Property-Legal Affairs, Banja Luka, Department in Srpski Brod ("the Administration for Geodetic and Property-Legal Affairs", *Republička uprava za geodetske i imovinsko-pravne poslove, Banja Luka, Područna jedinica Srpski Brod)* issued a procedural decision changing information in the cadastral registry entry for the real estate owned by the applicant such that the house was removed from the registry. It is not known whether the applicant ever received this decision, and whether she appealed against it.

54. The Commission repeatedly asked the respondent Party to clarify whether the provisional measure is still in force, because the applicant Rašida Omerbašić believes that this is so. The respondent Party, in response, attached the letter of the Head of the Municipality Srpski Brod, wherein it is stated that none of the stated persons initiated any proceedings as required, and that the provisional measure ceased to be in force upon the expiry of the 60-day time limit.

2. Case no. CH/00/6539, Refika BAJRAMOVIĆ

55. The applicant lived at Trg Slobode 29 (now Trg Cara Dušana) in Bosanski Brod until October 1992, when she was obliged to leave because of the armed conflict. At that time she moved to Denmark, where she presently lives.

56. The applicant submitted the procedural decision on inheritance issued on 27 November 1990 which shows that she inherited the house located at Trg Slobode 29 from her deceased husband, Ismail (also referred to as Smajo) Bajramović. The cadastre excerpt of 7 June 1999 issued by the Municipality Bosanski Brod, Posavina Canton, the Federation of Bosnia and Herzegovina, also shows that the applicant is the sole owner of the property on the land marked as parcel no. k.č. 1/656 Cadaster Municipality Srpski Brod. The house was approximately 116 square meters in size.

57. On 26 February 1998 the Commission of the Municipal Secretariat took minutes to establish the category and degree of damage of the object located on the land marked as parcel no. k.č. 1/656, Cadaster Municipality Srpski Brod, owned by Bajramović Smajo and Omer (the applicant's husband and his brother) and took pictures. The Commission assessed that the remaining value of the property amounts to 9,525 DEM.

58. On 10 April 1998 the Municipal Secretariat issued a procedural decision on the destruction of the house located at Trg Cara Dušana 29 owned by Bajramović Omer and Smajo. The decision was based on Article 117 of the Law on Physical Planning of the Republika Srpska (see paragraph 110 below). The respondent Party never submitted any evidence that this procedural decision was delivered to the persons named in the decision or the applicant. The applicant submitted this procedural decision together with her application, although she did not state in what manner she obtained it.

59. On an unknown date the applicant's house was demolished.

60. On 29 March 2000 the applicant filed a repossession request for the property to the Ministry for Refugees and Displaced Persons in Srpski Brod.

61. The applicant states that she joined the other owners of demolished houses in the request for provisional measures before the First Instance Court in Derventa, although she did not submit any evidence of this.

62. On 30 July 2000, the applicant states that she addressed the Municipality Srpski Brod with a request that a similar house be rebuilt. To date, the applicant has not obtained a response.

63. On 8 September 2000 the First Instance Court in Derventa issued a provisional measure on behalf of some of the property owners or possessors (see paragraph 50 above). The applicant's request was rejected, with the explanation that the applicant was not a "party to the proceedings". Specifically, the Court noted that although evidence of her possession of the land located at plot no. 84 in Srpski Brod was submitted, there was no evidence of the connection between Refika Bajramović, and the requestors of the provisional measure, Hana, Amir and Kemal Bajramović. The applicant states that she did not receive this decision.

64. On 4 November 2002 the Republic Administration for Geodetic and Property-Legal Affairs issued a procedural decision changing information in the cadastral registry entry for the real estate owned by the applicant's husband such that the house was removed from the registry. It is not known if the applicant received this decision.

65. On 24 June 2003 the Ministry for Refugees and Displaced Persons, Srpski Brod Department, issued a procedural decision confirming that the applicant is the owner of the house located at Trg cara Dušana 29 (k.č. 656/1), and that she has the right to immediately repossess it. The procedural decision also notes that the property is destroyed and that no one presently uses it.

3. Case no. CH/01/7068, Rifat JAŠAREVIĆ

66. The applicant was the owner of a house located at Trg Slobode 16 (now Cara Dušana) in Bosanski Brod. As evidence, the applicant submitted the 2 March 1987 procedural decision on inheritance, and the pre-war land registry excerpt issued by the Land Registry Department within the Municipal Court in Bosanski Brod, dated 18 July 1989, which shows that he was the owner of the house. The house was recorded as entry no. 140 of the Cadastral Municipality Bosanski Brod in the Land Registry books. The house was located on parcel no. k.č. 1/768, which was state-owned land and the applicant possessed the right of permanent use over it. The house and surrounding yard was approximately 100 square meters.

67. Due to the armed conflict the applicant left his home in October 1992 and moved to Denmark, where he presently lives.

68. On 10 April 1998 the Municipal Secretariat issued a procedural decision ordering the demolition of the house. The decision was based on Article 117 of the Law on Physical Planning of the Republika Srpska (see paragraph 110 below). The applicant states that he has never received any decision, and the respondent Party, although specifically requested, also did not submit any evidence of this. However, the applicant mentioned the date of the decision and the decision number in his application.

69. On an unknown date the applicant's house was demolished.

70. On 8 October 1998 the applicant filed a repossession request to the CRPC for his house and property. It appears that the applicant never received a response to his request.

71. On an unknown date the applicant, together with the other owners, filed a proposal for issuance of a provisional measure before the First Instance Court in Derventa.

72. On 8 September 2000 the First Instance Court in Derventa issued a provisional measure on behalf of some of the property owners. However, the proposal of Ćazim Jašarević (the applicant's father) was rejected with the reasoning that he failed to specify his claim and provide evidence of his claim. An appeal against the decision had to be lodged eight days from the day of receipt of the decision. The applicant states that this procedural decision was never delivered to Ćazim Jašarević or to him, and therefore he was not able to file an appeal in time.

4. Case no. CH/01/7091, Sakib MAČKOVIĆ

73. On an unknown date prior to the armed conflict, the applicant inherited land and a house from his father in Srpski Brod, which was located at Trg Slobode 24 (presently Cara Dušana) in Bosanski Brod.

74. According to the land registry excerpt of 6 June 1998 issued by Municipality Bosanski Brod, the Posavina Canton, the Federation of Bosnia and Herzegovina, the applicant was the sole owner of a house located in Bosanski Brod. The house was located on state-owned land marked as parcel no. k.č. 1/659, and the deed of possession for the house was recorded as no. 1393. The house was approximately 80 square meters in size.

75. Due to the armed conflict the applicant left his home in 1992 and moved to Slavonski Brod in Croatia.

76. The applicant submitted minutes taken on 26 February 1998 by the Commission of the Municipal Secretariat whereby the Commission determined that the house located at Trg Slobode 24 has no material value.

77. The respondent Party failed to provide the Commission with any procedural decision related to the destruction of the house, despite repeated requests. The applicant states that he has also tried to obtain this procedural decision, but he has been informed that his file is lost.

78. The applicant's house was destroyed on an unknown date during 1998.

79. On an unknown date the applicant and other owners of demolished houses at Trg Cara Dušana filed a proposal for issuance of a provisional measure before the First Instance Court in Derventa. The applicant states that a legal aid centre lawyer submitted the request for provisional measures on their behalf, which is why he does not have a copy of the request.

80. On 14 July 2000 the applicant filed a repossession request to the CRPC for his house and property.

81. On 8 September 2000 the First Instance Court in Derventa issued a provisional measure on behalf of some of the property owners (see paragraph 50 above), and in relation to the applicant Sakib Mačković, his request was rejected stating that he had not submitted evidence supporting his request. The provisional measure with respect to his father, Husnija Mačković was issued, which also concerned the same property. The applicant states that the Court must have erred in citing his father Husnija Mačković as the owner, as he inherited the property from his father long ago. The applicant considered that the provisional measure was in force with respect to his property.

82. On 4 November 2002 the Republic Administration for Geodetic and Property-Legal Affairs issued a procedural decision changing information in the cadastral registry entry for the real estate owned by the applicant such that the house was removed from the registry. It is not known if the applicant received this decision.

83. On 8 July 2003 the CRPC issued a decision confirming that the applicant was the *bona fide* possessor of land marked as parcel no. k.č. 1/185, registered in the Land Registry book as entry number 1315, Cadaster Municipality Srpski Brod, and that he was the owner of the house built on the mentioned land.

84. On 17 March 2004 the applicant obtained a deed of possession for his property from the Municipality Srspki Brod which states that he owns a "yard", but there is no mention of a house located in the yard.

85. On 25 March 2004 the applicant submitted a repossession request to the Ministry for Refugees and Displaced Persons in Derventa for his property. On 31 March 2004 the Ministry for Refugees and Displaced Persons in Derventa issued a procedural decision recognizing the applicant as the owner of the abandoned property located at Cara Dušana bb, parcel no. k.č. 659, and authorizing him to repossess it immediately. The Ministry also noted that the house was devastated.

86. The applicant returned to Bosanski Brod on an unknown date, where he presently lives.

5. Case no. CH/01/8074, Ifeta ARADAN

87. The applicant was the owner of a house located at Trg slobode 15 (presently Trg cara Dušana) in Bosanski Brod. As evidence, the applicant submitted the land registry excerpt issued by the Land Registry Department within the Municipal Court in Odžak, the Federation of Bosnia and Herzegovina, on 13 November 2001, which shows that she was the owner of the house located on parcel no. k.č. 1/682. The house was 39 square meters in size.

88. The applicant moved to Germany in 1992 due to the armed conflict, where she lived until her death.

89. On 26 February 1998 a Commission of the Municipal Secretariat issued minutes on the establishment of damage to the applicant's house. According to their assessment, the "value of the house amounts to 0.00".

90. On 10 April 1998 the Municipal Secretariat issued a procedural decision ordering the demolition of the applicant's house. The decision was based on Article 117 of the Law on Physical Planning of the Republika Srpska (see paragraph 110 below). Mr. Aradan states that the mentioned procedural decision has never been delivered to his mother, or to him. The respondent Party submitted no evidence that it has been delivered to the applicant, nor whether a temporary representative was appointed to the applicant in these proceedings.

91. On an unknown date the applicant's house was demolished.

92. On 14 March 2000 the applicant submitted a repossession request for her house to the Ministry for Refugees and Displaced Persons in Srpski Brod.

93. On 12 July 2000 the applicant filed a repossession request to the CRPC. It appears that the CRPC has not issued a decision upon the applicant's request.

94. On 11 October 2002 the applicant died, but her son, Mr. Aradan, as his mother's sole inheritor, informed the Chamber that he wishes to maintain the application before the Chamber.

95. On 17 September 2002 the Ministry for Refugees and Displaced Persons in Srpski Brod issued a procedural decision recognizing Ifeta Aradan as the owner of the property located at Trg slobode 15, and granting her the right to immediately repossess it.

96. On 4 November 2002 the Republic Administration for Geodetic and Property-Legal Affairs issued a procedural decision changing information in the cadastral registry entry for the real estate owned by the applicant such that the house owned by Ifeta Aradan was removed from the registry.

97. On 26 August 2004 the Department for Surveying and Property Affairs, Centar, Brčko District (*Uprava za geodetski i imovinski pravni poslove područni centar Brčko*), issued a deed of possession showing that Ifeta Aradan possesses the yard located on parcel no. k.c. 682, and no mention of the house is made.

IV. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the facts

98. The Commission received the written observations on the admissibility and merits of the applications on 28 January 2003, 28 August 2004, 30 August 2004, and 31 August 2004. In all of its written observations the respondent Party generally disputes the facts as stated in the applications. The respondent Party asserts that the applicants have not substantiated with any evidence the allegations that it intentionally damaged the houses prior to their destruction so that its destruction appeared necessary. In any case, the respondent Party claims that the applicants could not have known who destroyed their houses because they have not lived in Srpski Brod since 1992. In relation to the applicants' statement that the owners of the houses never received any invitation to participate in the administrative proceedings, the respondent Party states that its organ have never been able to obtain the applicants' addresses.

99. The respondent Party notes that the assertions by Rifat Jašarević and Refika Bajramović that they are inheritors of the property after the death of their family members are disputable because they have not submitted evidence of this. The respondent Party also alleges that at the moment of issuance of the procedural decisions on demolition of the houses, Rifat Jašarević and Refika Bajramović did not possess any evidence that they were the owners of the disputed houses. Also, Rifat Jašarevic and Refika Bajramović in the proceedings regarding issuance of a provisional measure were not a party to those proceedings, as determined by the 8 September 2000 procedural decision of the First Instance Court in Derventa, nor had they initiated civil proceedings against the Municipality Srpski Brod until that date. With regard to Ifeta Aradan, the respondent Party also points out that she was not mentioned in the decision of 8 September 2000, therefore, she could not have been a party to those proceedings either.

100. Also, the respondent Party states that Rifat Jašarević and Sakib Mačković failed to submit a repossession requests for their property to the competent Ministry for Refugees and Displaced Persons. The respondent Party states that they only submitted their repossession requests to the CRPC.

101. The respondent Party asserts that the applicants Ifeta Aradan and Refika Bajramović were reinstated into their property in 2000, which is contradictory to the statements that their repossession requests have not been decided upon.

2. As to the admissibility

102. The respondent Party is of the opinion that the applications are inadmissible for non-exhaustion of legal remedies because in the administrative proceedings the applicants never filed a complaint against "the silence of the administration". Moreover, the respondent Party finds the applications of Rifat Jašarević and Refika Bajramović inadmissible *ratione personae* because the inheritance proceedings before the domestic courts have not been initiated it is unclear, the respondent Party submits, whether they have any rights in relation to the disputed houses. Since

the property was returned to Refika Bajramović and Ifeta Aradan, (see paragraphs 65 and 95 above) the respondent Party also suggests that those applications may be struck out, as the matter has been resolved.

3. As to the merits

103. The respondent Party holds that there has been no violation of Article 6 of the Convention because at the time of issuing the procedural decisions on removal of the damaged houses, the applicants' addresses were unknown, and therefore they could not been invited to participate in the proceedings. The respondent Party repeats that some of the applicants did not participate in the proceedings related to the demolition of the houses because they were not parties to those proceedings.

104. The respondent Party asserts that there has been no violation of Article 8 of the Convention because the interference was based on paragraph 2 of Article 8 of the Convention, as a required measure in the interest of "public safety", the "protection of health," and "the rights and freedoms of others".

105. As to the alleged discrimination, the respondent Party disputes this and points out that the property of persons of Serb origin was also taken down.

106. As to the alleged violation of Article 1 of Protocol No. 1 to the Convention, the respondent Party claims that it does not contest the applicants' right to property and that they may, on the ground of the "priority right to construct" reconstruct their houses and the damage that resulted from their removal, and also be compensated for this. The respondent Party also repeats that the houses were devastated and that their removal was necessary to protect the lives and health of others, and that and each city takes the most care of the appearance of its urban centre.

B. The applicants

107. In their reply to the respondent Party's written observations on the admissibility and merits the applicants generally all expressed the following: their houses were demolished by the Municipality Srpski Brod without their knowledge in 1998, the procedural decisions on demolition of their houses were never delivered to them, or to their representatives, and therefore they were not able to timely appeal or react. Moreover the houses in question were not badly damaged in the war, rather, the Municipality Srpski Brod intentionally damaged their houses in order to justify their destruction. The applicants point out that Serb property owners did not face the same problems in Srpski Brod, and the Municipality Srpski Brod clearly discriminated against them, and in fact, intended to prevent Bosniaks from ever returning to Bosanski Brod.

V. RELEVANT LEGISLATION

A. The Law on Physical Planning of the Republika Srpska

108. The Law on Physical Planning of the Republika Srpska (Official Gazette of the Republika Srpska ("OG RS"), nos. 19/96, 25/96, 25/97, 3/98, 10/98, 53/02, and 64/02, as well as consolidated text no. 84/02) entered into force on 25 September 1996.

109. According to Article 32, the organization, physical planning and use of an area and the construction of a settlement is governed by the adoption and the carrying out of plans. Plans within the sense of this law are: physical plans (physical plan of the Republic, physical plan of an area, physical plan of a municipality), urban development plans, regulatory plans and urban projects. Regulatory plans and urban projects are technical regulatory planning documents that determine and define the conditions for the design and construction of a facility.

110. The administrative organ competent for building affairs may, either *ex officio* or at the request of an interested party, order the demolition of a building, or part thereof, if it has been established that due to its worn-out state, *vis major*, war activities or large-scale damage the object can no longer serve its purpose or is dangerous to the life or health of people, surrounding objects or traffic. The administrative organ may impose conditions and measures for the demolition. An appeal against a demolition order has no suspensive effect (Article 117). The Municipality of Srpski Brod issued the above-mentioned procedural decisions on demolition of the houses on the basis of Article 117.

111. Article 118

> "If during the proceedings to issue a procedural decision on demolition of a building or part of the building it is established that danger to the life and well-being of people, surrounding buildings and traffic may be removed also by reconstructing the building or its part, at the owner's request, in accordance with the provisions of this law, the reconstruction of the building may be allowed provided that it is completed by the time line determined by the administrative authority competent for construction affairs."

B. The Law on Construction Land

112. The Law on Construction Land (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, nos. 34/86, 1/90 and 29/90; OG RS, nos. 29/94, 23/98, and 5/99) was in force during periods relevant to this decision. Article 4 provided that no right of ownership can exist over construction land in a city or town. Construction land cannot be alienated from social ownership, but rights defined by law may be gained over it (Article 5). The municipality governs and disposes of building land subject to conditions provided by law and regulations issued pursuant to the law (Article 6). Rights in respect of building land shall be asserted in proceedings before a regular court if not otherwise stated by law (Article 11).

113. The former owner of building land transferred into social ownership enjoys a temporary right to use land not yet used for construction, a priority right to use land not yet built on for the purpose of construction, as well as a permanent right to use building land already used for construction as long as the building continues to exist on the land (Article 21(1) and (3) and Article 40(1)).

114. Article 25 of the Law set forth the procedure to take over undeveloped city construction land. It provided:

> "(1) The Municipal Assembly shall issue a procedural decision on taking over of undeveloped city building land in order to realize its permanent use, that is to prepare it for construction.
>
> "(2) The procedural decision referred to in the preceding paragraph may also be issued when the Municipal Assembly establishes that social interest for construction of temporary socially owned building exists.
>
> "(3) The previous owner, that is the holder of the temporary right to use the land, shall be heard in the proceedings of taking over the land.
>
> "(4) An appeal cannot be filed against the procedural decision on taking over the land but an administrative dispute may be filed against it."

115. The permanent right to use the land may be transferred, alienated, inherited or mortgaged only together with the building. In case of seizure of the building, the procedural decision on seizure shall terminate the previous owner's right of permanent use of the land under the building and of the land serving for the regular use of the building (Article 42).

116. Subject to the above-mentioned possibility of seizure, the permanent right to use the land

lasts as long as the building remains on it. If the building is removed on the basis of a decision of a competent organ because of its deterioration, or is destroyed by *vis major*, its owner has the priority right to use the land for construction on condition that a regulatory plan or an urban development plan envisages the construction of a building over which one can have a property right. The owner of a building who removes it in order to build a new one has a similar priority right to use the land, again provided that the relevant plan envisages such construction (Article 43).

C. Law on Construction Land of the Republika Srpska

117. On 15 May 2003 the High Representative imposed a Decision Enacting the Law on Construction Land of the Republika Srpska, which entered into force on 16 May 2003 (OG RS no. 41/03). The following provisions of the Law are of particular relevance to the present case:

> Article 1
>
> "This Law regulates: the conditions and manner of acquiring rights to land in towns, cities and similar settlements and other areas intended for residential and other complex construction; to the time of the cessation of those rights, the manner of use and management, and compensation for the use of that land."
>
> Article 4a
>
> "Privately owned City Construction Land shall be understood to be: developed construction land, or the land beneath edifices and the land which serves for the regular use of those edifices for which a permanent right to use such land exists in accordance with Article 39, and the land referred to in Article 96 of this law."
>
> Article 6
>
> "The municipality manages and disposes of the state owned City Construction Land in the manner and under conditions foreseen by the law and regulations issued on the basis of the law."
>
> Article 10
>
> "The rights on City Construction Land shall be protected in the procedure before a competent court, if not otherwise determined by the law."
>
> Article 20
>
> "The previous owner shall have the following rights to the undeveloped state-owned City Construction Land:
>
> 1. temporary right of use of undeveloped City Construction Land until takeover (hereinafter: temporary right of land use)
>
> 2. priority right to use undeveloped City Construction Land for building purposes (hereinafter: priority right to use the land for building)
>
> "The previous owner of undeveloped City Construction Land, which becomes state property, shall be considered to be:
>
> 1. the person who, at the time of the transformation of construction land into social, now state property, had a right of ownership registered in the cadaster or land book registry,
>
> 2. The person for whom a right of ownership is established at the time of the transformation of the construction land into social, now state, property.

3. the person on whom the previous owner before the date of transformation of construction land into social, now state property, transferred the right of use of the land on the basis of a contract that bears valid signatures verified by the competent body or if the contract payments were made through a bank or a post office, or if the new owner paid tax or contribution for that land."

Article 39

"Upon entry into force of this law, the owner of a building, or particular parts of a building, obtains an ownership right on the land beneath the building and on the area of land that is contemplated in the regulation plan or parcelling plan for use as the regular service area of the building, except in cases subject to revision under Articles 87-92 of the Interim Provisions of this Law.

ARTICLE 87 *(REVISION)*

"The validity of construction land allocated between 6 April 1992 and the entry into force of this law, upon which natural persons held a right of use on or before 6 April 1992 for residential, agricultural or business purposes (hereinafter: revision), shall be determined solely in accordance with this Law.

"Allocations of construction land after 6 April 1992 made pursuant to valid exemptions issued by the Office of the High Representative pursuant to the High Representative's Land Decision banning transfers of socially owned land *(hereinafter referred to as "waivers")* shall not be subject to revision, but may be challenged before a court of competent jurisdiction.

"Natural persons, or their legal heirs, who held a right of use to construction land and who used that land on or before 6 April 1992 for residential, agricultural or business purposes, and whose right of use was cancelled without their consent between 6 April 1992 and the date of entry into force of this law, may submit a request for revision before the organ competent for property legal issues within 2 years from the date of entry into force of this law (hereinafter: claimants).

"A claim under the previous paragraph may also be brought by a member of the family household of the person mentioned in the previous paragraph, or their legal representative.

"The transformation of the permanent right of use, which was acquired between 6 April 1992 and the entry into force of this law, shall not be transformed into private ownership pursuant to Article 39 of this Law until the expiration of the deadline for which claims for revision may be filed under paragraph 3 of this Article."

D. The Law on General Administrative Procedure

118. On 26 March 2002, the Republika Srpska Law on General Administrative Procedure entered into force. The Law was published in the Republika Srpska Official Gazette no. 13/02. Until that time Republika Srpska had applied the Law on General Administrative Procedure of the Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia ("OG SFRY") no. 47/86).

119. Regarding the appointment of temporary representatives, Article 55 of the former Law on General Administrative Procedure provided as follows:

"(1) If a party who is not competent to personally deal with all actions in the procedure has no legal representative or some action should be taken against a person whose whereabouts are not known and who is not represented, the organ proceeding in the case shall appoint a temporary representative to the party if that is required by the urgency of the case and the procedure has to be conducted. This organ shall immediately inform the trustee organ, and if a temporary representative is appointed to the person of unknown whereabouts, it shall perform its conclusion in the usual manner.

…

> "(4) The appointed person is obliged to accept representation, and he can only reject representation for reasons prescribed by separate provisions. The temporary representative shall participate only in the procedure for which he is explicitly appointed and until the legal representative or the party itself or its authorised agent appear."

E. The Law on Inheritance

120. The Law on Inheritance of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 7/80 and 15/80) regulates inheritance proceedings in the Republika Srspka.

121. Article 126 provides:

> "Inheritance proceedings shall be opened upon the death of a person. The same effect shall be created if a person is declared deceased."

122. Regarding the transfer of inheritance to inheritors, Article 133 provides:

> "The estate of a deceased person shall be transferred by force of law to his or her inheritors at the moment of his or her death."

VI. COMPLAINTS

123. The applicants complain that the respondent Party demolished their houses to prevent them from repossessing their property and returning to Bosanski Brod. The applicants also maintain that the houses were not badly damaged during the armed conflict, rather the Municipality intentionally further damaged them in order to justify their complete demolition. The applicants complain that their rights guaranteed under Articles 6, 8, and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention have been violated, and that the respondent Party has discriminated against them based on their national origin.

VII. OPINION OF THE COMMISSION

A. Admissibility

124. The Commission recalls that the applications were introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided on the applications by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the applications. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicants' cases, from those of the Chamber, except for the composition of the Commission.

125. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept….In so doing, the [Commission] shall take into account the following criteria: …(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted …. and (c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Admissibility *ratione personae*

126. The respondent Party asserts that the applicants Rifat Jašarević and Refika Bajramović do not have standing before the Chamber and Commission, because probate proceedings were never initiated in order to establish who are the heirs of their family members. The Commission notes that the evidence submitted to it conflicts with the respondent Party's assertion. In the case of Refika Bajramovic, she possesses the final and binding procedural decision on inheritance dating from 1990. In the case of Rifat Jašarević, he also possesses a final and binding inheritance decision from 1987, as well as the cadastral record from 1989 showing him to be the owner of the property. Both of these procedural decisions on inheritance were forwarded to the respondent Party. The Commission therefore finds the respondent Party's objections in this regard ill-founded. In any case, the Commission notes that estate of a deceased person is transferred to his inheritors by force of law, upon the person's death (see paragraph 122 above). The Commission also notes that the applicant Ifeta Aradan died while her application was pending before the Chamber, but that her only son wishes to maintain her application. He has initiated inheritance proceedings as well, which are not yet finalized. Having regard to the above, the Commission concludes that the applicants Rifat Jašarević, Refika Bajramović, and Jasmin Aradan on behalf of Ifeta Aradan, do not lack standing before the Commission.

2. Non-exhaustion of domestic remedies

127. The respondent Party asserts that the applications are inadmissible for non-exhaustion of domestic remedies. The respondent Party points out that the applicants could have participated in the proceedings before the competent administration authorities and filed an appeal for the "silence of the administration". With regard to the proceedings to demolish the houses, the respondent Party has not submitted any evidence that the applicants were allowed the opportunity to participate in the proceedings, nor was a temporary representative appointed on their behalf. When the applicants learned of the demolition of their houses, they initiated proceedings before the court to protect the property built on the land, and to establish whether the demolition of their houses was executed in a legal manner. In these circumstances, the Commission finds that the applicants have taken all reasonable steps to protect their property. Thus, the Commission finds that the admissibility requirements regarding exhaustion of domestic remedies have been met**.**

3. Conclusion as to admissibility

128. The Commission rejects the respondent Party's objections to the admissibility of the applications *ratione personae*, and for non-exhaustion of domestic remedies. As no other inadmissibility grounds were asserted or are apparent, the Commission decides to declare the applications admissible in their entirety.

B. Merits

129. Under Article XI of the Agreement, the Commission must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the Convention and the other international agreements listed in the Appendix to the Agreement.

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

130. Article 6 of the Convention provides, in relevant part, as follows:

> "In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."

131. The European Court has held the first paragraph of Article 6 applicable to the following proceedings determining civil rights or obligations: Those stages in expropriation, consolidation and planning proceedings, and proceedings concerning building permits and other real estate permits that have direct consequences for ownership rights in the property involved. In general, this provision also applies to proceedings the outcome of which will have an impact on the use or enjoyment of property.

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

> "It would be inconceivable, in the opinion of the Court, that Article 6 § 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings. …
>
> "This Article embodies the 'right to a court', of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing"

(*id.* at page 18, paragraphs 35-36).

133. The right of access to a court enshrined in Article 6 is not absolute, however; it may be subject to certain limitations because the right "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals" (Eur. Court HR, *Ashingdane v. United Kingdom*, Series A no. 93, page 24, paragraph 57). Nonetheless, the limitations "must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired" (*id.*). "Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (*id.*).

134. In the present cases, the Commission observes that the Municipality of Srpski Brod conducted the proceedings leading up to the demolition of the applicants' real property without the applicants being present. It is undisputed that the procedural decisions ordering the demolition of the applicants' houses were not delivered to the applicants. The respondent Party asserts that this is because their addressees were unknown, and therefore they could not been invited to participate in the proceedings. In accordance with domestic law, the Municipality of Srpski Brod was obliged to appoint a temporary representative to represent the interests of the applicants in those proceedings because it claimed their whereabouts were unknown. It is also undisputed that the Municipality Srpski Brod failed to appoint a temporary representative on behalf of the applicants. The Commission recognises that in certain circumstances it may be reasonable and necessary for the domestic authorities to conduct proceedings *in absentia* of an interested party. In such circumstances, Article 55(1) of the Law on Administrative Procedure provides for the appointment of a temporary representative of an interested party whose place of residence is unknown (see paragraph 119 above). As the European Court held in *Colozza v. Italy*, however, when domestic law provides that proceedings may be conducted *in absentia* of an interested party, "that person should, once he becomes aware of the proceedings, be able to obtain, from a court which has heard him, a fresh determination of the merits of the charge" (Eur. Court HR, judgement of 12 February 1985, Series A no. 89, page 15, paragraph 29). In the present cases, the applicants have been given no actual opportunity to participate in the proceedings that deprived them of their property rights, and they have been unable to adequately protect their interests.

135. In these circumstances, the Commission considers that the respondent Party has failed to provide the applicants with access to a court for the determination of their property rights. Therefore, the Commission finds that the respondent Party has violated the applicants' rights as guaranteed by paragraph 1 of Article 6 of the Convention.

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

136. Article 1 of Protocol No. 1 to the Convention provides:

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

137. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is of a general nature, enshrines the principle of peaceful enjoyment of property. It is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to the condition that the deprivation must be in the public interest and subject to conditions provided for by law and by the general principles of international law. It appears in the second sentence of the same paragraph. The third rule recognises that States are entitled, among other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for that purpose. It is contained in the second paragraph (*see, e.g.*, case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions January-July 1999).

a. Existence of a "possession"

138. The European Court has stated repeatedly that "the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other rights and interests constituting assets can also be regarded as 'property rights', and thus as 'possessions' for the purposes of this provision" (Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 96, paragraph 54).

139. In its observations, the respondent Party states that Rifat Jašarević and Refika Bajramović did not initiate inheritance proceedings before the domestic courts after the death of their family members. However, as discussed above in paragraph 126, these applicants have submitted ample evidence of their ownership of the property in question. The respondent Party does not deny the fact that Rašida Omerbašić, Ifeta Aradan, and Sakib Mačković are the owners of the demolished house.

140. With regard to Ifeta Aradan the records show that she was the sole owner of her demolished house. Her son Jasmin Aradan submitted his birth certificate, as well as the death certificate for Ifeta Aradan. Domestic law provides that at the moment of the testator's death the estate is transferred, by force of law, to his or her heirs (see paragraph 122 above). All the heirs administer and dispose of the property together until the issuance of a procedural decision on succession; therefore, Jasmin Aradan has a legal interest in the property upon her death. The Commission concludes, therefore, that the demolished houses amounted to the applicants' possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

b. Deprivation of property

141. The Commission finds that the applicants have been deprived of their property rights by the issuance of procedural decisions ordering the demolition of their houses, and by their actual

destruction shortly thereafter.

c. Lawfulness of the interference

142. Regardless of which of the three rules set forth in Article 1 of Protocol No. 1 is applied in a given case (i.e., interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1. The European Court has explained as follows:

> "The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possession should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only 'subject to the conditions provided for by law' and the second paragraph recognises that the States have the right to control the use of property by enforcing 'laws'. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and entails a duty on the part of the State or other public authority to comply with judicial orders or decisions against it. It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary".

(Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 97, paragraph 58).

143. The respondent Party asserts that there was a valid basis in domestic law for the demolition of the applicants' houses, as provided for in Article 117 of the Law on Physical Planning. However, the Municipality failed to provide the applicants with an opportunity to exercise their rights because the Municipality issued the decisions *in absentia* of the applicants. Furthermore, the Municipality did not appoint a temporary representative to the applicants to protect their rights in those proceedings.

144. The Commission also recalls that, in the 8 September 2000 procedural decision issued by the First Instance Court in Derventa, the Court established some irregularities in the proceedings before the administrative organ. The court issued a provisional measure in some cases ordering the Municipality not to take any steps to change the factual situation. The reasoning part of this decision states:

> "The court derived such a conclusion on the basis of the evidence presented because the attached substantive evidence shows that, since 1998, the plaintiffs have tried to acquire their rights regarding the disputed real estate in accordance with the provisions of Annex 7 to the Dayton Peace Agreement, and that, according to the evidence, they requested protection of their rights even before 13 July 1998. However, the competent organ of the defendant, by its procedural decision of 18 May 1998, ordered the pulling down of buildings without conducting the prescribed administrative proceedings, and the Ministry for Urbanism, as the second instance organ, by its procedural decision of 4 June 1999, annulled the procedural decision in question. In any case, the disputed facilities were subsequently pulled down and removed, and by examining the deed of title no. 869, Cadastral Municipality of Srpski Brod, it was established that the parcel formerly marked as "religious school" [*mejtef*] is now marked as "building-lot" [gradilište].[1] The fact that the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, by its decisions, intervened in favour of the plaintiffs Lošić Amir and Antolović nee Lošić Sanela shows that it was made more difficult for the plaintiffs to acquire their legal rights. In addition, there are certain circumstances of an objective nature that show the danger of causing irreparable harm and that the acquiring of the plaintiffs' rights could be made more difficult because of the well-known fact that Land Books, as well as pre-war cadaster records for the Municipality of Srpski Brod are unavailable because they were

[1] *Mejtef* refers to a religious school within the Islamic faith.

> taken to the Republic of Croatia after the liberation of Srpski Brod, and it is not known where are they now."

145. Having regard to its findings that the proceedings regarding the demolition of the applicants' houses were not conducted in a lawful manner, as well taking into account the above observations of the Court of First Instance in Derventa, the Commission finds that the respondent Party has failed to satisfy the principle of lawfulness contained within Article 1 of Protocol No. 1 to the Convention. In the circumstances, it is unnecessary for the Commission to further consider the remaining requirements of this Article.

d. Conclusion as to Article 1 of Protocol No. 1 to the Convention

146. The Commission concludes that the applicants have protected "possessions" within the meaning of Article 1 Protocol No 1 to the Convention, but by the actions of the respondent Party, they have been deprived of the right to protect their property in proceedings before the Municipality. Accordingly, the Commission concludes that the respondent Party has violated the applicants' rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

3. Discrimination

147. In connection with Article II(2)(b) of the Agreement, the Commission finds it appropriate in these cases to consider whether the respondent Party has discriminated against the applicants with respect to their property rights. The Commission has already established that the respondent Party has violated the rights of the applicants protected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

148. Article II(2)(b) of the Agreement provides as follows:

> "The Human Rights Chamber shall consider … alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority or such official or organ."

149. The applicants allege that they have been discriminated against in the enjoyment of their rights due to their Bosniak origin.

150. With respect to their discrimination claim, the applicants stated that the Municipality of Srpski Brod demolished their houses, and in total 16 houses owned by Bosniaks, one house owned by a person of Croat origin, and one object owned by the Islamic Community were destroyed. According to the applicants, the Municipality issued the decisions to demolish the houses to prevent the implementation of Annex 7 to the Dayton Agreement and to prevent the repossession of their pre-war houses.

151. In examining whether there has been discrimination contrary to the Agreement, the Commission recalls the jurisprudence of the Chamber. As the Chamber noted in its decision in *Đ.M. v. The Federation of Bosnia and Herzegovina* (case no. CH/98/756, decision on admissibility and merits of 13 April 1999, paragraph 72, Decisions January-July 1999), it is necessary first to determine whether the applicants were treated differently from others in the same or relevantly similar situations. Any differential treatment shall be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin (*see Jusufović,* case no. CH/98/698, decision on admissibility and merits of 10 May 2000,

paragraph 115, Decisions January-June 2000).

152. The Commission recalls that the obligation of the Parties to the Agreement to "secure" the rights and freedoms mentioned in the Agreement to all persons within their jurisdictions not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (*see* the aforementioned *Đ.M.* decision at paragraph 75).

153. The Commission also recalls that the applicant Rašida Omerbašić submitted evidence that J.B., of Serb origin, received permission to run a catering business in her house after the end of the war, and as catering premises must meet specific conditions, the house was clearly not so damaged as to require its destruction The applicant asserts that the catering facility was operational until the issuance of the decision ordering its demolition.

154. The Commission also recalls that OSCE involved itself in assisting the applicants and other owners of the demolished houses. In this capacity, OSCE asserted to the domestic authorities that the conduct of the Municipality clearly shows that it discriminated against Bosniaks and Croats. The respondent Party asserts that persons of Serb origin were treated in the same manner, and that Serb owned houses were also demolished. The Commission requested evidence of the demolition of houses owned by persons of Serb origin, and the respondent Party never responded to this request. The Commission places great importance on the OSCE's opinion as to the discriminatory conduct of the Municipality, given its field presence and first-hand knowledge of the events that unfolded in Bosanski Brod in 1998.

155. The Commission finds that the applicants have been deprived of their possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention, on the ground that they are persons of Bosniak origin in a predominantly Serb municipality. Furthermore, the respondent Party took advantage of the applicants' absence from administrative proceedings and completed those proceedings before the Municipality unlawfully. The respondent Party has provided no reasonable or objective justification for this treatment, and the Commission can find no such justification on its own. Therefore, the Commission concludes that the applicants have been discriminated against in the enjoyment of their rights protected by Article 1 of Protocol No. 1 to the Convention.

4. Articles 8 and 13 of the Convention

156. In view of its finding of a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the Commission does not consider it necessary to examine the cases separately under Articles 8 and 13 of the Convention.

5. Conclusion as to the merits

157. In summary, the Commission finds that the respondent Party has violated the rights of the applicants protected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Commission further finds that the respondent Party has discriminated against the applicants with respect to their property rights protected by Article 1 of Protocol No. 1 to the Convention. The Commission has not considered it necessary to examine the applications separately under Articles 8 and 13 of the Convention.

VIII. REMEDIES

158. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection, the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

159. The applicants have requested that the Chamber (now the Commission) order the respondent Party to return them into possession of their property and to reconstruct their houses. The applicants have not submitted a compensation claim.

160. The Commission notes that it has found a violation of the applicants' rights as protected by Article 6 of the Convention, and Article 1 of Protocol No. 1 to the Convention and that the Municipality discriminated against the applicants in relation to their property rights.

161. In view of the above violations, the Commission considers it appropriate to award a sum to the applicants for the demolition of their properties. Having regard to the sums awarded in case no. CH/00/5964, *Zlata Lošić and 5 others v. The Republika Srspka*, decision on admissibility and merits of 10 September 2004, and also recalling that the applicant Rašida Omerbašić owned a 2/3 share of her house, the Commission will order the respondent Party to pay Rašida Omerbašić the sum of 6,666 Convertible Marks ("KM") for the demolition of her house built on the land marked as parcel no. k.č. 1/686, (see paragraph 36 above), to pay Refika Bajramović the sum of 10,000 KM for the demolition of her house built on the land marked as parcel no. k.č. 1/656, (see paragraph 56 above), to pay Rifat Jašarević the sum of 10,000 KM for the demolition of his house built on the land marked as parcel no. k.č. 1/768, (see paragraph 66 above), to pay Sakib Mačković the sum of 10,000 KM for the demolition of his house built on the land marked as parcel no. k.č. 1/659 (see paragraph 74 above), and to pay Jasmin Aradan the sum of 10,000 KM for the demolition of the house built on the land marked as parcel no. k.č. 1/682 (see paragraph 87above). These payments shall be made at the latest within one month from the date of receipt of this decision.

162. Furthermore, the Commission considers it appropriate to order the respondent Party to pay to each applicant 4,000 KM as compensation for the loss of the use of their property and for non-pecuniary damages suffered by them as a result of the violations of their human rights, including their inability to take part and protect their rights in the proceedings before the domestic organs. This payment shall be paid to the applicants within one month from the date of receipt of this decision.

163. The Commission further awards simple interest at an annual rate of 10% (ten percent) as of the due date on the sums awarded above or any unpaid portion thereof until the date of settlement in full.

164. The Commission will also order the respondent Party to report to it, or its successor institution, within four months from the date or receipt of the present decision, on the steps taken by it to comply with the above orders.

IX. CONCLUSIONS

165. For the above reasons, the Commission decides,

1. unanimously, that the applications are admissible against the Republika Srpska in their entirety;

2. unanimously, that the Republika Srpska has violated the rights of the applicants to access the court as guaranteed by paragraph 1 of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that, with respect to the demolition of the real property by the procedural decisions of 18 May 1998, the Republika Srpska has violated the rights of the applicants to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that the applicants have been discriminated against in the enjoyment of their property rights as protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srspka thereby being in breach of Article I of the Human Rights Agreement;

5.unanimously, that it is not necessary to consider the applications in connection with Articles 8 and 13 of the European Convention on Human Rights;

6. unanimously, to order the Republika Srpska to pay Rašida Omerbašić the sum of 6,666 (six thousand six hundred and sixty six) Convertible Marks for the demolition of her house built on the land marked as parcel no. k.č. 1/686, at the latest within one month from the date of receipt of this decision;

7. unanimously, to order the Republika Srpska to pay Refika Bajramović the sum of 10,000 (ten thousand) Convertible Marks for the demolition of her house built on the land marked as parcel no. k.č. 1/656, at the latest within one month from the date of receipt of this decision;

8. unanimously, to order the Republika Srpska to pay Rifat Jašarević the sum of 10,000 (ten thousand) Convertible Marks for the demolition of his house built on the land marked as parcel no. k.č. 1/768, at the latest within one month from the date of receipt of this decision;

9. unanimously, to order the Republika Srpska to pay Sakib Mačković the sum of 10,000 (ten thousand) Convertible Marks for the demolition of his house built on the land marked as parcel no. k.č. 1/659, at the latest within one month from the date of receipt of this decision;

10. unanimously, to order the Republika Srpska to pay Jasmin Aradan the sum of 10,000 (ten thousand) Convertible Marks for the demolition of the house built on the land marked as parcel no. k.č. 1/682, at the latest within one month from the date of receipt of this decision;

11. unanimously, to order the Republika Srpska to pay each of the applicants the sum of 4,000 (four thousand) Convertible Marks as compensation for the loss of the use of their property and for non-pecuniary damages suffered by them as a result of the violations of their human rights, including their inability to take part and protect their rights in the proceedings before the domestic organs, at the latest within one month from the date of receipt of this decision;

12. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum over the sums awarded in conclusions nos. 6, 7, 8, 9, 10, and 11 above or any unpaid portion thereof from the due date until the date of settlement in full; and

13. unanimously, to order the Republika Srspka to report to it, or its successor institution within four months from the date of receipt of this decision.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission