DECISION ON ADMISSIBILITY AND MERITS

(delivered on 6 July 2001)

Case no. CH/00/6258

Neđo BABIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

and

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 3 July 2001, with the following members present:

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

Mr. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of 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 Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The application concerns two apartments.

2. The applicant was the pre-war occupancy right holder over an apartment at Ulica Stanična 14 in Sanski Most, the Federation of Bosnia and Herzegovina ("the FBiH apartment"). On 6 April 1999 the Service of Spatial Planning and Environment Protection of Municipality Sanski Most ("the Service") issued a decision confirming the applicant's occupancy right over the FBiH apartment and ordered the temporary occupant to vacate it within 90 days. On 7 September 1999 the applicant requested the Service to enforce its decision of 6 April 1999. The applicant eventually repossessed the FBiH apartment on 10 April 2001.

3. The applicant was the temporary occupant of an apartment at Ulica Vidovdanska 5 in Gradiška, the Republika Srpska ("the RS apartment").

4. The case raises issues under Articles 6(1), 8, 13 and 14 of the European Convention on Human Rights ("European Convention") and Article 1 of Protocol No. 1 to the European Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was introduced on 30 November 2000.

6. On 10 January 2001 the Chamber issued an order for provisional measures, ordering the Republika Srpska to prevent the taking of any steps to evict the applicant from the RS apartment until 10 March 2001.

7. On 12 January 2001 the case was transmitted to both respondent Parties under Articles 6, 8, 13, 14 of the European Convention and Article 1 of Protocol No. 1 to the European Convention. The Republika Srpska was asked to answer three additional questions: 1) how it appears that the Fund for Pension and Disability Insurance of the Republika Srpska ("the Fund") on 28 September 2000 decided to allocate the RS apartment to Ms. B.G. when the decision of 16 September 1996, allocating the apartment to the applicant, was still valid; 2) who was the pre-war occupant of the RS apartment; and 3) whether an order for the applicant's eviction from the RS apartment was issued.

8. On 12 January 2001 the Registry sent a letter to the applicant informing him that he was entitled to submit a compensation claim within three weeks. The Registry did not receive any answer.

9. On 13 February 2001 the Republika Srpska submitted its observations. The Republika Srpska was of the opinion that the provisional measure ordered on 10 January 2001 should be withdrawn and that the application should be declared inadmissible as manifestly ill-founded as regards the Republika Srpska since the applicant had no right to occupy the apartment. However, the questions asked in the letter of 12 January 2001 were not answered.

10. On 15 February 2001 the Registry sent a new letter to the Republika Srpska repeating the questions asked in the letter of 12 January 2001.

11. On 19 February 2001 the Republika Srpska submitted a letter of the Fund for Pension and Disability Insurance of the Republika Srpska. It appears from the letter that the Fund had considered the decision of 16 September 1996, allocating the RS apartment to the applicant, quashed *ex lege* (see paragraph 32 below). It further appears that the RS apartment had never been declared abandoned since the pre-war occupancy right holder had died on 12 December 1991 and that nobody had succeeded to her right.

12. On 23 February 2001 the Federation of Bosnia and Herzegovina submitted its observations informing the Chamber that the Service of Spatial Planning and Environment Protection of Municipality Sanski Most issued an eviction order on 20 February 2001 and that the eviction of the temporary occupant of the FBiH apartment was scheduled for 5 March 2001.

13. On 12 March 2001 the applicant informed the Registry that the eviction of the temporary occupant of the FBiH apartment scheduled for 5 March 2001 had not been carried out.

14. On 27 March 2001 the Federation of Bosnia and Herzegovina informed the Chamber that the eviction of the temporary occupant of the FBiH apartment scheduled for 5 March 2001 had been postponed until 10 April 2001.

15. On 23 April 2001 the Federation of Bosnia and Herzegovina informed the Chamber that the eviction of the temporary occupant of the FBiH apartment scheduled for 10 April 2001 had been carried out.

16. On 5 June 2001 the Chamber adopted this decision.

III. ESTABLISHMENT OF THE FACTS

A. Particular facts of the case

1. The FBiH apartment

17. The FBiH apartment is located at Ulica Stanična 14 in Sanski Most, the Federation of Bosnia and Herzegovina. The applicant is the pre-war occupancy right holder over the apartment. Mr. R.J. was the temporary occupant of the apartment. On 6 April 1999 the Service of Spatial Planning and Environment Protection of Municipality Sanski Most issued a decision confirming the applicant's occupancy right and ordered the temporary occupant to vacate the FBiH apartment within 90 days.

18. On 7 September 1999 the applicant requested the Service to enforce its decision of 6 April 1999. He did not receive any answer. On 16 November 2000 the applicant reported to the Ministry of Justice of the Federation of Bosnia and Herzegovina – Administrative Inspection that the Service had not enforced its decision of 6 April 1999 yet.

19. On 20 February 2001 the Service of Spatial Planning and Environment Protection of Municipality Sanski Most issued an eviction order, scheduling the eviction of the temporary occupant for 5 March 2001. However, the eviction was not carried out, but postponed until 10 April 2001.

20. On 10 April 2001 the eviction of the temporary occupant was carried out. The applicant repossessed the FBiH apartment on 4 May 2001.

2. The RS apartment

21. The RS apartment is located at Ulica Vidovdanska 5 in Gradiška, the Republika Srpska. The occupancy right holder over the apartment was Ms. F.M. until she died on 12 December 1991. Nobody has succeeded to her right. The allocation right holder is the Fund for Pension and Disability Insurance of the Republika Srpska. The apartment has never been declared abandoned.

22. On 7 January 1991 Ms. B.G. requested the Fund to allocate her an apartment. On 9 September 1992 Ms. B.G. became the occupancy right holder over the RS apartment by virtue of a decision of the Fund issued on 4 August 1992.

23. On 9 September 1993 the Fund issued a new decision allocating a larger apartment to Ms. B.G and quashed the decision of 4 August 1992. It appears that the larger apartment was declared abandoned before it was allocated to Ms. B.G. The pre-war occupant of the larger apartment requested reinstatement and, accordingly, Ms. B.G. was ordered to vacate it.

24. On 16 September 1996 the Fund allocated the RS apartment to the applicant, because he had left his apartment in Sanski Most in 1995 due to the hostilities and was homeless at that moment. On 16 December 1996 the applicant became the occupancy right holder over the apartment by virtue of the decision of 16 September 1996. He lived in the apartment until 4 May 2001.

25. On 31 August 2000 Ms. B.G. requested the Fund to allocate the RS apartment to her again, because she had been ordered to vacate the larger apartment and had no other place to live in.

26. On 28 September 2000 the Fund granted Ms. B.G's request. However, the Fund did not quash the decision of 16 September 1996. In a letter of 15 February 2001 the Fund informed the Chamber that it had considered the decision of 16 September 1996 quashed *ex lege* (see paragraph 32 below).

27. On 14 November 2000 the Ministry for Refugees and Displaced Persons of the Republika Srpska Section Gradiška issued a decision confirming Ms. B.G's occupancy right over the RS apartment. The applicant was ordered to vacate the apartment within 15 days. On 27 November 2000 the applicant appealed to the Ministry for Refugees and Displaced Persons of the Republika Srpska in Banja Luka. The appeal has no suspensive effect. The applicant did not receive any answer.

28. On 10 January 2001 the Chamber issued an order for provisional measures, ordering the Republika Srpska to prevent the taking of any steps to evict the applicant from the RS apartment until 10 March 2001. The Ministry for Refugees and Displaced Persons of the Republika Srpska Section Gradiška did not issue an eviction order.

B. Relevant domestic law

1. The Federation of Bosnia and Herzegovina

a. The Law on Administrative Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina nos. 2/98 and 48/99)

29. Under Article 216(1) a competent organ is obliged to decide upon a request on the enforcement of a decision and to dispatch such a decision within 30 days from the date when the enforcement was requested.

30. Under Article 216(3) if a competent organ fails to adhere to the above mentioned deadline, an applicant is entitled to file an appeal (appeal against "the silence of the administration").

b. The Law on Administrative Disputes (Official Gazette of the Federation of Bosnia and Herzegovina no. 2/98)

31. Under Article 22(1) if the second instance organ in the administrative proceedings fails to render a decision upon the appeal of a Party within prescribed time-limit, the Party is entitled to institute an administrative dispute, whether the appeal to it was against a decision or against the silence of the first instance organ.

2. The Republika Srpska

a. The Law on Cessation of Application of the Law on Use of Abandoned Property (Official Gazette of the Republika Srpska nos. 38/98, 41/98, 12/99, 31/99 and 38/99)

32. Article 2 reads as follows:

> " All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.
>
> Any occupancy right or contract on use made between 1 April 1992 and 19 December 1998 is cancelled. A person who occupies an apartment on the basis of an occupancy right which is cancelled under this Article shall be considered a temporary user for the purposes of this Law.

A temporary user referred to in the previous paragraph who does not have other accommodation available to him/her has a right to a new contract on use to the apartment, if the occupancy right of the former occupant terminates under Article 16 of this Law or if a claim of the former occupant to repossess the apartment is rejected by the competent authority in accordance with this Law.

An occupancy right holder to an apartment as at 1 April 1992, who agreed to the cancellation of his/her occupancy right and who subsequently received another occupancy right which is cancelled under this Law, is entitled to make a claim for repossession of his/her former apartment in accordance with this Law."

b. The Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 14/84, 12/87 and 36/89, Official Gazette of the Republika Srpska nos. 19/93, 22/93 and 12/99)

33. Under Article 12(1) a person is entitled to the occupancy right over one apartment only.

IV. COMPLAINTS

34. As to the Federation of Bosnia and Herzegovina, the applicant complains about the failure of the authorities of the Federation of Bosnia and Herzegovina to reinstate him into the FBiH apartment in a timely manner. As to the Republika Srpska, the applicant complains about the attempts of the authorities of the Republika Srpska to evict him from the RS apartment. Specifically, the applicant alleges a violation of Articles 6(1), 8, 13, 14 of the European Convention and Article 1 of Protocol No. 1 to the European Convention.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Parties

1. The Federation of Bosnia and Herzegovina

35. In so far as the application is directed against it, the Federation of Bosnia and Herzegovina argues that the applicant did not exhaust all domestic remedies. The Federation of Bosnia and Herzegovina further argues that Article 8 of the European Convention and Article 1 of Protocol No. 1 to the European Convention have not been violated since the applicant's occupancy right over the FBiH apartment had been recognised by the decision of 6 April 1999 and the applicant eventually repossessed the apartment. The Federation of Bosnia and Herzegovina finally argues that a certain delay in the enforcing of the decision of 6 April 1999 is reasonable since approximately 2 million people left their apartments and houses during the hostilities, the vast majority of whom now want to be reinstated.

2. The Republika Srpska

36. In so far as the application is directed against it, the Republika Srpska argues that the application is inadmissible as manifestly ill-founded. The Republika Srpska is of the opinion that the applicant's eviction from the RS apartment is lawful since his occupancy right was cancelled by Article 2(2) of the Law on Cessation of Application of the Law on Use of Abandoned Property.

B. The applicant

37. The applicant argues that his eviction from the RS apartment and his repossession of the FBiH apartment should have been coordinated, so that he would not be evicted from the RS apartment before he was reinstated into the FBiH apartment.

VI. OPINION OF THE CHAMBER

A. Admissibility

1. The Federation of Bosnia and Herzegovina

38. 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(2)(a) and (c) of the Agreement which, so far as relevant, provides as follows:

> "The Chamber will 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 dismiss any application which it considers ... , manifestly ill-founded, ..."

39. The Federation of Bosnia and Herzegovina argues that the application is inadmissible *in toto* because of the non-exhaustion of domestic remedies, in so far as it is directed against the Federation of Bosnia and Herzegovina. Namely, the applicant was entitled to appeal to the Ministry of Urban Planning and Protection of Environment of Una-Sana Canton. Furthermore, the applicant was entitled to initiate an administrative dispute before the Cantonal Court in Bihać.

40. The Chamber has previously considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the European Convention (now Article 35(1) of the European Convention) (case no. CH/96/17, *Blentić*, decision on admissibility and merits of 5 November 1997, paragraph 19, Decisions on Admissibility and Merits March 1996-December 1997). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of personal circumstances of the applicants.

41. On 7 September 1999 the applicant requested the Service of Spatial Planning and Environment Protection of Municipality Sanski Most to enforce its decision of 6 April 1999. He did not receive any answer. On 16 November 2000 the applicant reported to the Ministry of Justice of the Federation of Bosnia and Herzegovina – Administrative Inspection that the Service had not enforced its decision of 6 April 1999 yet. On 20 February 2001 the Service issued an eviction order, scheduling the eviction of the temporary occupant for 5 March 2001. On 10 April 2001 the eviction was eventually carried out.

42. Under Article 216(1) of the Law on Administrative Proceedings the Service was obliged to decide upon the applicant's request of 7 September 1999 and to dispatch such a decision within 30 days. However, the Service issued an eviction order on 20 February 2001, more than 16 months after the deadline expired. The Service took almost another two months to carry out the eviction of the temporary occupant.

43. The Chamber notes the argument of the Federation of Bosnia and Herzegovina that the applicant did not appeal to the Ministry of Urban Planning and Protection of Environment of Una-Sana Canton and did not initiate an administrative dispute before the Cantonal Court in Bihać. However, use of these remedies, even if successful, would not remedy the applicant's complaints in so far as they relate to the failure of the authorities of the Federation of Bosnia and Herzegovina to enforce the decision of 6 April 1999 and, accordingly, to evict the temporary occupant from the FBiH apartment within the above mentioned time-limit. Furthermore, there is no reason to suppose that the Service, which disregarded its own decision for over 18 months, would treat decisions of the Ministry of Urban Planning and Protection of Environment of Una-Sana Canton or of the Cantonal Court in Bihać with any greater respect.

44. In these circumstances the Chamber is satisfied that the applicant could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law.

45. The Federation of Bosnia and Herzegovina further argues that the application is inadmissible as manifestly ill-founded as regards Article 8 of the European Convention and Article 1 of Protocol No. 1 to the European Convention since the applicant's occupancy right over the FBiH apartment had been recognised by the decision of 6 April 1999 and the applicant eventually repossessed the apartment.

46. However, contrary to the argument of the Federation of Bosnia and Herzegovina, the Chamber finds that there is a *prima facie* case against the Federation of Bosnia and Herzegovina as regards these Articles. Consequently, the applicant's complaint with regard to Article 8 of the European Convention and Article 1 of Protocol No. 1 to the European Convention is admissible.

47. The Federation of Bosnia and Herzegovina has not commented on the admissibility of the application as regards Articles 6(1), 13 and 14 of the European Convention. However, the Chamber notes that the applicant did not provide the Chamber with any evidence whatsoever of a violation of these Articles.

48. The Chamber thus finds that there is no *prima facie* case against the Federation of Bosnia and Herzegovina as regards these Articles. Consequently, the applicant's complaint with regard to Articles 6(1), 13 and 14 of the European Convention is manifestly ill-founded.

49. The Chamber finds that there are no other grounds for declaring the application inadmissible in so far as it is directed against the Federation of Bosnia and Herzegovina. Accordingly, the application is to be declared admissible against the Federation of Bosnia and Herzegovina with respect to Article 8 of the European Convention and Article 1 of Protocol No. 1 to the European Convention and inadmissible with respect to Articles 6(1), 13 and 14 of the European Convention.

2. The Republika Srpska

50. The Republika Srpska argues that the application is inadmissible as manifestly ill-founded, in so far as it is directed against the Republika Srpska.

51. The allocation right holder over the RS apartment is the Fund for Pension and Disability Insurance of the Republika Srpska. On 4 August 1992 the Fund allocated the apartment to Ms. B.G. On 9 September 1993 the Fund allocated a larger apartment to Ms. B.G and quashed the decision of 4 August 1992. On 16 September 1996 the Fund allocated the RS apartment to the applicant. On 31 August 2000 Ms. B.G. requested the Fund to allocate the RS apartment to her again, because she was ordered to vacate the larger apartment. On 28 September 2000 the Fund granted Ms. B.G's request. On 14 November 2000 the Ministry for Refugees and Displaced Persons of the Republika Srpska Section Gradiška issued a decision confirming Ms. B.G's occupancy right over the RS apartment and ordered the applicant to vacate the apartment within 15 days.

52. The Chamber notes that the applicant's occupancy right over the RS apartment was cancelled by Article 2(2) of the Law on Cessation of Application of the Law on Use of Abandoned Property (see paragraph 32 above). The Chamber further notes that the Service of Spatial Planning and Environment Protection of Municipality Sanski Most confirmed the applicant's occupancy right over the FBiH apartment on 6 April 1999. Under Article 12(1) of the Law on Housing Relations a person is entitled to the occupancy right over one apartment only (see paragraph 33 above).

53. The Chamber thus finds that the Republika Srpska acted in accordance with the law and there is no *prima facie* case against the Republika Srpska. Consequently, the applicant's complaint is manifestly ill-founded and thus inadmissible in its entirety as against the Republika Srpska.

B. Merits

1. Article 8 of the European Convention

54. The applicant alleges a violation of Article 8 of the European Convention.

55. Article 8 of the European Convention, so far as relevant, provides as follows:

> "(1) Everyone has the right to respect for ... his home ... .
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

56. The Chamber has previously established that such links as the applicant had with the FBiH apartment are sufficient for the apartment to be considered the applicant's "home" for the purposes of Article 8 of the European Convention (case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraph 42, Decisions and Reports 1998).

57. On 6 April 1999 the Service of Spatial Planning and Environment Protection of Municipality Sanski Most issued a decision confirming the applicant's occupancy right over the FBiH apartment. On 7 September 1999 the applicant requested the Service to enforce its decision of 6 April 1999. The temporary occupant of the apartment was eventually evicted on 10 April 2001.

58. The Federation of Bosnia and Herzegovina argues that Article 8 of the European Convention has not been violated since the applicant's occupancy right over the FBiH apartment had been recognised by the decision of 6 April 1999 and the applicant eventually repossessed the apartment.

59. However, the Chamber finds that the failure of the authorities of the Federation of Bosnia and Herzegovina to enforce the decision of 6 April 1999 and, accordingly, to evict the temporary occupant of the FBiH apartment for over 18 months constitutes an interference with the right of the applicant to respect for his home. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society." There will be a violation of Article 8 of the European Convention if any one of these conditions is not satisfied.

60. Under Article 216(1) of the Law on Administrative Proceedings the Service of Spatial Planning and Environment Protection of Municipality Sanski Most was obliged to decide upon the applicant's request of 7 September 1999 and to dispatch such a decision within 30 days. However, the Service issued an eviction order on 20 February 2001, more then 16 months after the deadline expired. The Service took almost another 2 months to carry out the eviction of the temporary occupant. This omission was not "in accordance with the law". As such this interference cannot be justified.

61. The Chamber notes the argument of the Federation of Bosnia and Herzegovina that approximately two million people left their apartments and houses during the hostilities and that a large majority of them wish to be reinstated. However, the Chamber finds that the general difficulties facing the authorities of the Federation of Bosnia and Herzegovina in complying with the law are not sufficient reason to justify the 18 months delay in this case.

62. Consequently, there has been a violation by the Federation of Bosnia and Herzegovina of the right of the applicant to respect for his home as guaranteed by Article 8 of the European Convention.

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

63. The applicant alleges a violation of Article 1 of Protocol No. 1 to the European Convention.

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

> "(1) 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.
>
> (2) 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."

65. The Chamber has previously established that the occupancy right over an apartment constitutes a "possession" for the purposes of Article 1 of Protocol No. 1 to the European Convention (case no. CH/96/28, *M.J*, decision on admissibility and merits of 7 November 1997, paragraph 32, Decisions on Admissibility and Merits March 1996-December 1997).

66. The Federation of Bosnia and Herzegovina argues that Article 1 of Protocol No. 1 to the European Convention have not been violated since the applicant's occupancy right over the FBiH apartment had been recognised by the decision of 6 April 1999 and the applicant eventually repossessed the apartment.

67. The Chamber finds that the failure of the authorities of the Federation of Bosnia and Herzegovina to enforce the decision of 6 April 1999 and, accordingly, to evict the temporary occupant of the FBiH apartment for over 18 months constitutes an interference with the right of the applicant to the peaceful enjoyment of his possessions.

68. In order to determine whether this interference has been justified under the terms of Article 1 of Protocol No. 1 to the European Convention, the Chamber must examine whether it was "in the public interest and subject to the conditions provided for by law". There will be a violation of Article 1 of Protocol No. 1 to the European Convention if any one of these conditions is not satisfied.

69. The Chamber has found, in the context of its examination of the case under Article 8 of the European Convention, that the interference with the right of the applicant to respect for his home cannot be justified. The Chamber finds that the interference with the right of the applicant to the peaceful enjoyment of his possessions cannot be justified either.

70. Consequently, there has been a violation by the Federation of Bosnia and Herzegovina of the right of the applicant to the peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the European Convention.

VII. REMEDIES

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

72. On 12 January 2001, following its Rules of Procedure, the Chamber asked the applicant if he had any claims for compensation. The applicant made no such claims. However, neither Article XI(1)(b) of the Agreement nor Rule 59 of the Chamber's Rules of Procedure preclude the Chamber from ordering remedies that have not been requested by an applicant (case no. CH/97/110, *Memić,* decision on admissibility and merits of 8 February 2000, paragraph 88, Decisions January-June 2000). Given that the applicant has succeeded in regaining the possession of the FBiH apartment after a protracted period of time, and that the delay is primarily the responsibility of the Federation of Bosnia and Herzegovina, the Chamber considers it appropriate to order the Federation to pay the applicant 1,200 Convertible Marks (*Konvertibilnih Maraka*) for the mental distress he has suffered as a result of this delay.

VIII. CONCLUSIONS

73. For the above reasons, the Chamber decides:

1. unanimously, to declare the application admissible against the Federation of Bosnia and Herzegovina under Article 8 of the European Convention and Article 1 of Protocol No. 1 to the European Convention;

2. unanimously, to declare the application inadmissible against the Federation of Bosnia and Herzegovina under Articles 6(1), 13 and 14 of the European Convention;

3. unanimously, to declare the application inadmissible against the Republika Srpska;

4. unanimously, that the failure of the authorities of the Federation of Bosnia and Herzegovina to enforce the decision of 6 April 1999 and, accordingly, to evict the temporary occupant of the FBiH apartment for over 18 months constitutes a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the European Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that the failure of the authorities of the Federation of Bosnia and Herzegovina to enforce the decision of 6 April 1999 and, accordingly, to evict the temporary occupant of the FBiH apartment for over 18 months constitutes a violation of the right of the applicant to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,200 Convertible Marks (*Konvertibilnih Maraka)* by way of compensation for moral damage suffered;

7. unanimously, that simple interest at an annual rate of 10% (ten percent) will be payable on the amount, or any unpaid portion thereof, awarded in conclusion 6 above, outstanding to the applicant at the end of the period set out in that conclusion for such payment;

8. unanimously, to order the Federation to report to it, not later than one month after the date when 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.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel