



DECISION ON ADMISSIBILITY

Case no. CH/01/7617

Lenka MIČIĆ

against

BOSNIA AND HERZEGOVINA and THE REPUBLIKA SRPSKA

and

Case no. CH/01/7969

Tomislav KOBELJA

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 February 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Article VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. PROCEEDINGS BEFORE THE CHAMBER

1. The application of the applicant Ms. Lenka Mičić, citizen of Bosnia and Herzegovina of Serb origin, (case no. CH/01/7617) was introduced on 21 June 2001.
2. The applicant requested that the Chamber order the Republika Srpska, as a provisional measure, to suspend the enforcement of a decision of the Commission for Real Property Claims of Refugees and Displaced Persons (CRPC), so as to prevent the applicant's eviction from the house she lives in. The CRPC decision establishes that Mr. Tomislav Kobelja is the owner of the property in Bijeljina at Ulica Neznanih Junaka 190, which includes the house inhabited by the applicant. On 14 July 2001 the President of the Chamber issued an order for the provisional measure requested. At the same time the case was transmitted to both respondent Parties, the Republika Srpska and Bosnia and Herzegovina.
3. On 28 September 2001 the Chamber received the observations on admissibility and merits from the Republika Srpska. On 8 November 2001 the Chamber received the applicant's comments on these observations. To date the Chamber has not received any observations from Bosnia and Herzegovina.
4. On 9 October 2001 Mr. Tomislav Kobelja, citizen of Bosnia and Herzegovina of Croat origin, (case no. CH/01/7969) submitted an application to the Chamber in which he complains of a violation of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention because he is prevented from returning to his property and former home in Bijeljina. The case was registered the same day.
5. On 14 November 2001 the CRPC was invited to act as *amicus curiae* in the proceedings before the Chamber. It submitted its comments and observations on 17 December 2001.
6. On 7 September, 11 and 13 October 2001 the Chamber deliberated on the case of Ms. Lenka Mičić. On 7 January and 7 February 2002 the Chamber deliberated on both the cases of Ms. Lenka Mičić and Mr. Tomislav Kobelja and decided to join the cases. On the latter date it adopted the present decision.

II. THE RELEVANT FACTS OF THE CASES

7. On 9 July 1992 (in Bijeljina, Bosnia and Herzegovina) and on 16 July 1992 (in Zagreb, Croatia) Ms. Mičić and Mr. Kobelja concluded a contract of exchange by which Ms. Mičić exchanged real estate owned by her in Korčula, Croatia, for real estate owned by Mr. Kobelja in Bijeljina, Bosnia and Herzegovina. After the conclusion of the exchange contract, Ms. Mičić and Mr. Kobelja registered themselves as owners over the newly acquired properties.
8. In 1996 Mr. Kobelja sold part of the property in Korčula, Croatia, to a third party. In 1997 he exchanged the remaining part of the property formerly owned by Ms. Mičić for a residential building in Sesevete, Croatia.
9. On 29 July 1998 Mr. Kobelja commenced civil proceedings before the Bijeljina Court of first instance, case no. P-650/98, in order to obtain a judgement declaring the contract on exchange null and void.
10. On 10 July 1998 Mr. Kobelja submitted a claim to the CRPC for the exchanged property in Bijeljina. On 6 February 2001 the CRPC issued the decision no. 202-8579-1/1, recognizing Mr. Kobelja as the legal possessor over the land and owner of the house and three supporting buildings in Bijeljina. The CRPC decision in favour of Mr. Kobelja and also the rejection of Ms. Mičić's request for reconsideration (see paragraph 13 below) against it were both solely based on the fact that Mr. Kobelja was the pre-war owner before 1 April 1992. No possible changes to property relations after 1 April 1992 were taken into account by the CRPC.
11. On 16 March 2001 Ms. Mičić initiated counter-proceedings before the Bijeljina court asking the court to declare the exchange contract to be valid.

12. On 16 April 2001 the competent Department in Bijeljina of the Ministry for Refugees and Displaced Persons of the Republika Srpska (Odsjek ministrava za izbjegla i raseljena lica R.S.) issued a conclusion on the execution of the CRPC decision in favour of Mr. Kobelja.

13. On 24 July 2001 the CRPC rejected a request for reconsideration submitted by Ms. Mičić, since she had concluded the contract on exchange with Mr. Kobelja on 9 July and 16 July 1992, i.e. after 1 April 1992.

14. On 23 April 2001, following a request made by Ms. Mičić, the first-instance court in Bjeljina issued a provisional order suspending the enforcement of the CPRC decision. This order does not set forth the provision of law it is based on.

15. Ms. Mičić alleges that this provisional order did not have any legal effect or consequence, as it was not in accordance with the then applicable domestic law. She argues that only the Chamber's order for provisional measures to suspend the enforcement of the CRPC decision stopped her eviction from the property in Bijeljina.

16. Ms. Mičić submits that, since she acquired possession over the property in Bijeljina through the exchange contract, she reconstructed the damaged house in Bijeljina and constructed new buildings on the site.

III. RELEVANT LEGAL PROVISIONS

A. The General Framework Agreement for Peace in Bosnia and Herzegovina – Annex 7, Agreement on Refugees and Displaced Persons

17. Annex 7 to the General Framework Agreement, entitled Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. In accordance with Article VII of Annex 7 an Independent Commission for Displaced Persons and Refugees, later renamed Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was established.

18. The CRPC shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not enjoy possession of that property (Article XI). The CRPC shall determine the lawful owner of the property according to Article XII(1). The decisions of CRPC are final and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina (Article XII(7)).

19. The Parties shall cooperate with the work of the CRPC, and shall respect and implement its decisions expeditiously and in good faith (Article VIII).

B. Decision on the Law on the Implementation of CRPC Decisions in the Republika Srpska

20. This Law was imposed by the High Representative on 27 October 1999 and is published in the Official Gazette of Republika Srpska (hereinafter "OG RS" 31/99, 18/00 and 39/00).

21. Article 1

"This Law shall regulate the administrative enforcement, by way of return into possession, on the territory of the Republika Srpska, of decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter referred to as the "Commission"), created under Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina."

22. Article 10

"The right holder referred to in the Commission decision and/or any other person who held a legal interest in the property or apartment at issue on the date referred to in the dispositive of the Commission decision, is entitled to submit a request for reconsideration to the Commission, in accordance with Commission regulations.

A person with a legal interest in the property or apartment at issue which was acquired after the date referred to in the dispositive of the Commission decision, may lodge an appeal against the conclusion on permission of enforcement issued by the competent administrative organ, only as permitted by the provisions of this Law. The appeal procedure mentioned in this paragraph may not refute the regularity of the Commission decision. The regularity of the Commission decision may be reviewed only through the reconsideration procedures referred to in Article 11 of this Law.”

23. Article 11

“On receipt of a request for reconsideration, the Commission may notify the competent administrative organs responsible for the enforcement of the Commission decision of the pending request for reconsideration.

Once notified of the pending request for reconsideration by the Commission, the competent administrative organ shall suspend the enforcement of the Commission decision, until such time as it receives notification from the Commission of the outcome of the reconsideration.

In reference to the previous paragraph, the competent administrative organ shall not suspend the enforcement of the Commission decision, unless it has received official notification of the request for reconsideration from the Commission.

After examining the request for reconsideration, the Commission may:

- a. refuse to admit the request as being inadmissible, not submitted within due time or as submitted by an unauthorised person;
- b. reject the request as being unfounded;
- c. accept the request, revoke its previous decision and issue a new decision.

The decision of the Commission refusing or rejecting the reconsideration request shall be delivered to the person who requested the reconsideration. The decision of the Commission accepting the reconsideration request and revoking its previous decision shall be delivered to the person who requested the reconsideration and all other persons who received the original decision, and to the administrative organ responsible for enforcement.”

24. Article 12

“The appeal against the conclusion on permission of enforcement of the decision of the Commission, referred to in paragraph 2 of Article 10 of the Law, must be lodged before the competent administrative body that issued the conclusion on permission of enforcement, within 8 days from the date of delivery of the conclusion on permission of enforcement.

The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days, to prove that the right holder named in the Commission’s decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive of the Commission’s decision.

Enforcement proceedings before the responsible administrative organ shall not be suspended pending the court’s decision.

As an exception to the previous paragraph, the competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative organ if a verified contract on the transfer of rights was made after 14 December 1995.”

25. Article 13

“The competent court shall determine whether the transfer of rights to the appellant was conducted voluntarily and in accordance with the law.

If the transfer of rights was conducted between 1 April 1992 and 14 December 1995, and its validity is disputed by the respondent, the burden of proof shall lie on the party claiming to have acquired rights to the property under the transaction to establish that the transaction was conducted voluntarily and in accordance with the law.

If the validity of the transfer has been determined in previous proceedings which took place prior to the entry into force of this Law, the decision taken in the previous proceedings shall be null and void.

The court may make whatever orders are necessary to give effect to its decision, including orders setting aside legal transactions, orders for making or erasing entries in the appropriate public books/registers, and orders lifting any order for suspension of the administrative proceedings.

The relevant parties to the appeal shall notify the competent administrative body of the court’s decision.

The responsible administrative body shall resume enforcement proceedings as required, or discontinue proceedings in accordance with the court's decisions."

26. On 4 December 2001, the High Representative imposed the Decision on the Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees, inserting *inter alia* a new Article 12a. It entered in force eight days after the publication in the OG RS on 21 December 2001 (OG RS 65/01).

27. The new Article 12 a, relevant in the present case, reads:

"The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days to prove that the right holder named in the Commission's decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive Commission's decision.

The competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative body pending the court's decision where the appellant can show evidence of a written contract on transfer of rights in accordance with domestic law and irreparable damage to the enforcer if the enforcement proceedings continued."

C. Law on the Cessation of the Law on the Use of Abandoned Property

28. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property is published in the OG RS, no. 38/98, dated 11 December 1998 and subsequently amended (OG RS 12/99 and OG RS 31/99).

29. Article 1 paragraph 2

"The provisions of this law shall apply to all real property, including privately-owned business premises, privately-owned houses and privately-owned apartments with occupancy right (apartments) which were vacated since 30 April 1991, whether or not the real property was declared abandoned: provided that the owner, possessor or user lost possession of the real property or the occupancy right holder lost possession of the apartment before 19 December 1998."

30. Article 3

"The owner, possessor or user of the real property who abandoned the property shall have the right to repossess the real property with all the rights which s/he had before 30 April 1991 or before the real property became abandoned."

31. Article 16

"A claim for repossession of the apartment may be filed within 6 months from the date of entry into force of this Law. If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, his/her occupancy right shall be cancelled."

32. On 4 December 2001, the High Representative amended the Law on the Cessation of the Application of the Law on the Use of the Law on Abandoned Property, inserting *inter alia* a new Article 2a. These amendments came in force eight days after the publication in the Official Gazette of the Republika Srpska on 21 December 2001 (OG RS 65/01):

33. Article 2a

"The provisions of this Law shall also apply to contracts on exchange of apartments, where the exchange took place between 1 April 1992 and 19 December 1998 in accordance with the Law on Housing Relations (RS OG 19/93, 22/93, 12/99 and 31/99) (hereinafter "ZOSO").

In the event that each party to the contract on exchange filed a claim for repossession before the expiry of the deadline set out in Article 16, the competent authority shall process the claims according to this Law. Notwithstanding, the competent authority in each municipality shall deem the exchange valid, if both parties give a statement reconfirming the contract on exchange, and shall revalidate the contracts on use pursuant to Article 27 paragraph 2, point 4 of this Law.

In the event that neither party to the contract on exchange filed a claim for repossession before the expiry of the deadline set out in Article 16, the competent authority in each municipality shall revalidate the contracts on use pursuant to Article 27 paragraph 2, point 4 of this Law.

In the event that only one party to the contract on exchange filed a claim for repossession before the expiry of the deadline set out in Article 16, the competent authority shall inform in writing the corresponding competent authority in the municipality where the exchanged apartment is located of the claim. The receiving competent authority shall then deem a claim to have been filed, before the expiry of the deadline set out in Article 16, for the exchanged apartment within its jurisdiction and process the claim according to the law.

In case of a dispute as to the validity of the contract on exchange, the competent authority shall suspend proceedings and shall refer the parties to the competent court according to the provision of the Law on General Administrative Procedures (SFRJ OG 47/86; taken over by Article 12 of the Constitutional Law on Implementation of the Constitution of the Republika Srpska, RS Official Gazette, No. 21/92) regulating preliminary issues, in order to rule on the allegation. Notwithstanding the provisions of the Law on Civil Procedures (SFRJ OG 4/77; taken over by Article 12 of the Constitutional Law on Implementation of the Constitution of the Republika Srpska, RS Official Gazette, No. 21/92), the burden of proof shall lie upon the party claiming to have acquired rights to the apartment through the contract on exchange to establish that the transaction was conducted voluntarily and in accordance with the law. Where one of the exchanged apartments is located in the territory of another republic of the former SFRY, the burden of proof shall lie upon the party claiming that the contract on exchange was not conducted voluntarily and in accordance with the law to demonstrate that the status of the parties prior to the exchange shall be restored."

IV. COMPLAINTS

34. The applicant Ms. Lenka Mičić complains that the enforcement of the CRPC decision and the eviction order against her constitute a violation of her right to property as protected by Article 1 of Protocol No. 1 to the Convention and the right to home as protected by Article 8 of the Convention.

35. The applicant Mr. Tomislav Kobelja complains that the suspension of the enforcement of the eviction order and the fact that he thus is barred from returning to his property and former home in Bijeljina is a violation of his right to property as protected by Article 1 of Protocol No. 1 to the Convention and the right to home as protected by Article 8 of the Convention.

V. OPINION OF THE CHAMBER

A. Case CH/01/7617 Lenka MIČIĆ

1. Admissibility against Bosnia and Herzegovina

36. During the proceedings before the Chamber, the Chamber has not received any evidence which would tend to indicate that Bosnia and Herzegovina is responsible for any of the matters that the applicant Ms. Mičić complains of. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement. These do not include matters relating to the enforcement of CRPC decisions in cases of exchange of property between pre-war occupants or owners. Accordingly, this matter is within the competence of the Entities. Consequently, the case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore the case is to be declared inadmissible *ratione personae* as against that respondent Party.

2. Admissibility against the Republika Srpska

37. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept ... and shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted"

(a) Pendency of court proceedings concerning the validity of the exchange contract

38. The Chamber notes that the question of the ownership over the property claimed by both applicants is the subject matter of a case pending before the first-instance court in Bijeljina. In this dispute the court will clarify whether the exchange contract between Ms. Mičić and Mr. Kobelja is valid. If the Bijeljina court determines that the contract is valid, Ms. Mičić will be the owner of the property, as she will have obtained it by virtue of a valid transfer subsequent to 1 April 1992, the date to which the CRPC decision establishing Mr. Kobelja's rights refers (see paragraphs 10 and 18 above). The Chamber is of the opinion that the domestic courts are well equipped and able to solve the civil law problems at issue. Thus, at first sight, it seems that at the time of introduction the application was premature because a domestic proceeding concerning the matter was pending.

(b) Threat of eviction pending court determination of the validity of the exchange contract

(i) Under the Law on Implementation before 29 December 2001

39. The Chamber notes, however, that at the time when the applicant Ms. Mičić introduced her application, on 21 June 2001, Mr. Kobelja had received an enforceable CPRC decision in his favour. The CPRC decisions are final and binding and the domestic administrative bodies are obliged to issue execution orders based on the CRPC decision.

40. Pursuant to Article 12(2) of the Law on Implementation of CRPC Decisions (see paragraph 24 above), in case of an appeal against a conclusion on permission of enforcement of a CRPC decision, "the responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days, to prove that the right holder named in the Commission's decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive of the Commission's decision". However, "enforcement proceedings before the responsible administrative organ shall not be suspended pending the court's decision". To sum up, the court in Bijeljina could not have suspended the execution of the enforcement of the CPRC decision while the dispute was pending. Hence, Ms. Mičić was under the imminent threat of an eviction from her home due to the conclusion on the execution of the CRPC decision of the relevant administrative body of 16 April 2001, notwithstanding the pending court dispute relating to the validity of a written contract by which she purports to have obtained ownership over the property.

41. It remains unclear whether the provisional measure issued by the first-instance court in Bijeljina on 23 April 2001, which ordered the prohibition of the enforcement of the CRPC decision, would have halted the eviction of Ms. Mičić. Before the coming into force of the new Article 12a of the Law on Implementation of CRPC Decisions, the law explicitly stated in Article 12 that no suspension of the enforcement of the CPRC decision was possible.

42. The Chamber is mindful of the aim of the General Framework Agreement for Peace in Bosnia and Herzegovina, as manifested in the provisions of its Annex 7, to unconditionally enable the quick return of refugees to their pre-war homes and properties. Nonetheless, it finds that in the present case an excessive burden was placed on Ms. Mičić. This burden was such that it possibly gave rise to violation of Ms. Mičić's rights as protected by the Convention, in particular when looking at the specific circumstances of the case: in 1996 and 1997 Mr. Kobelja had sold and exchanged Ms. Mičić's former property in Korčula, Croatia. Therefore, the Chamber finds that at the time of the introduction of the application, Ms. Mičić could not be required to wait with the application to the Chamber in accordance with Article VIII(2)(a) of the Agreement for the outcome of the court dispute concerning the validity of the contract, while she was under the threat of being evicted from the property in Bijeljina. At this point in time the application was not inadmissible on grounds of non-exhaustion of domestic remedies.

(ii) Under the Law on Implementation as currently in force

43. The Chamber notes that with the coming into force, on 29 December 2001, of the new Article 12a, paragraph 2, of the Law on Implementation of CRPC Decisions and the coming into force of the amendments to the Law on the Cessation of the Application of the Law on the Use of Abandoned

Property the situation described above has changed. A new balance of interests has been put into place easing the excessive burden formerly put on the applicant Ms. Mičić.

44. Pursuant to the new Article 12a, paragraph 2, of the Law on Implementation of CRPC Decisions the relevant domestic court, in this case the Court of first instance in Bijeljina, now has the power to make a specific order to suspend the enforcement proceedings before the responsible administrative body pending the court's decision on the voluntary and lawful character of a transfer of the rights over the disputed property after 1 April 1992. In accordance with the new Article 12a, paragraph 2, of the Law on Implementation of CRPC Decisions, Ms. Mičić must fulfil two conditions to be eligible for such a suspension: firstly, Ms. Mičić must show evidence of a written contract on transfer of rights in accordance with domestic law. The Chamber notes that the applicant Ms. Mičić is in possession of such a contract. Secondly, there has to be irreparable damage to the enforcer, Ms. Mičić, if the enforcement proceedings continued. In the present case, it appears that if Ms. Mičić succeeds before the domestic courts in showing that she has nowhere to return to, as she has claimed before the Chamber, the courts could find that also the requirement of irreparable harm to the enforcer is met.

45. Considering that the Bijeljina court already issued such a provisional order on 23 April 2001, as discussed in paragraph 41 above, it seems probable that the court will deal with a request for suspension of enforcement under Article 12a, paragraph 2, in a manner favourable to Ms. Mičić.

(iii) Under the provisions governing exchange contracts in Article 2a of the Law on Cessation of the Law on the Use of Abandoned Property

46. In addition, the new Article 2a of the Law on Cessation of the Law on the Use of Abandoned Property provides that "in case of a dispute as to the validity of the contract on exchange, the competent authority shall suspend proceedings and shall refer the parties to the competent court". Hence, under this law, in the present case of Ms. Mičić, the competent authority would suspend the enforcement of the eviction order *ex officio* until the domestic court decides on the validity of the exchange contract. Accordingly, the legal situation created by the new Article 2a of the Law on Cessation of the Law on the Use of Abandoned Property also results in a suspension of the eviction of Ms. Mičić from the property in Bijeljina until the resolution of the civil dispute before the domestic courts.

47. The Chamber notes that while the suspension of enforcement is mandatory under Article 2a of the Law on Cessation of the Law on the Use of Abandoned Property, the suspension is subject to the fulfilment of certain conditions and to the court's discretion under Article 12a of the Law on Implementation of CRPC Decisions. The Chamber also observes that, in a case as the one presently before it, the relationship between Article 2a of the Law on Cessation of the Law on the Use of Abandoned Property and Article 12a of the Law on the Implementation of CRPC Decisions is unclear. The two provisions appear to be in a relationship of "mutual speciality", in so far as Article 2a specifically applies to cases where there is a dispute over the validity of an exchange contract. Article 12a, on the other hand, specifically governs the conditions under which the enforcement of a CRPC decision may be suspended. It is therefore open to question which of the two provisions governs the present case.

(iv) Conclusion

48. The Chamber finds, however, that no matter which law is applicable in the present case, Ms. Mičić has the possibility to obtain a valid suspension of the execution of the eviction order against her from the domestic bodies.

49. The Chamber in this context recalls the well-established jurisprudence of the European Commission of Human Rights in regard to the requirement to exhaust domestic remedies in cases where a remedy became available or effective while a case was pending before the Commission. In *Fell v. The United Kingdom* (decision of 19 March 1981, DR 23, p.102, 112, 113) the applicant failed to avail himself of a remedy the existence of which was brought to light between the introduction of the application and the Commission's decision on admissibility. The Commission held that the relevant date for the question whether domestic remedies had been exhausted was the date of the decision on admissibility and not the date of the introduction of the application.

50. The Chamber finds that after the establishment of a legal mechanism against the immediate danger of eviction, Ms. Mičić is required to exhaust the now existing remedies. As to the question of the ownership over the property in Bijeljina, her application to the Chamber is premature as the proceedings are still pending before the first-instance court in Bijeljina. Accordingly, the domestic remedies available to Ms. Mičić to oppose her eviction from the Bijeljina property and to oppose the invalidation of the exchange contract have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible. The Chamber also decides to withdraw its order for a provisional measure with immediate effect.

B. The case CH/01/7969 Tomislav KOBELJA

51. In regard to the application of Mr. Tomislav Kobelja, the Chamber notes that it is only directed against the Republika Srpska. The Chamber finds that the legal system in place gives Mr. Kobelja sufficient possibility to clarify his rights over the property in Bijeljina. As noted in paragraph 9 above, proceedings initiated by Mr. Kobelja are currently pending before the court in Bijeljina. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

VI. CONCLUSION

52. For these reasons, the Chamber,

- 1. unanimously, DECLARES THE APPLICATION BY MS. LENKA MIČIĆ (Case no. CH/01/7617) INADMISSIBLE, insofar as it is directed against Bosnia and Herzegovina;**
- 2. by 10 votes to 4, DECLARES THE APPLICATION BY MS. LENKA MIČIĆ (Case no. CH/01/7617) INADMISSIBLE, insofar as it is directed against the Republika Srpska;**
- 3. unanimously, WITHDRAWS ITS ORDER FOR A PROVISIONAL MEASURE IN THE CASE OF MS. LENKA MIČIĆ (Case no. CH/01/7617) WITH IMMEDIATE EFFECT and**
- 4. unanimously, DECLARES THE APPLICATION BY MR. TOMISLAV KOBELJA (Case no. CH/01/7969) INADMISSIBLE.**

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber