HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

DECISION ON ADMISSIBILITY AND MERITS

(delivered on 10 October 2003)

Case no. CH/02/12427

Dominik ILIJAŠEVIĆ

against

BOSNIA AND HERZEGOVINA
AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 October 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

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

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57, 58 and 66 of the Chamber’s Rules of Procedure:

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I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Croat origin. The applicant is charged with committing war crimes against the civilian population under Article 154 paragraph 1 of the Criminal Code of the Federation of Bosnia and Herzegovina. On 9 August 2000, the investigative judge of the Cantonal Court in Zenica issued a procedural decision ordering the pre-trial detention of the applicant on suspicion of committing the criminal offence with which he is charged. The applicant was arrested and initially detained on 28 August 2000. The investigation against the applicant before the Cantonal Court in Zenica lasted 6 months, and the trial should have started in February 2001, but due to the unexpected illness of the presiding judge, it was indefinitely postponed. On 9 March 2001, the applicant was jointly indicted, along with five named others, to stand trial before the Cantonal Court in Sarajevo on suspicion of having been involved in the criminal act of terrorism under Article 146 paragraphs 1 and 3 of the Criminal Code of the Federation of Bosnia and Herzegovina concerning the murder of Jozo Leutar, the former Deputy Minister of Interior of the Federation of Bosnia and Herzegovina. The applicant's trial before the Cantonal Court in Sarajevo commenced on 7 June 2001 and lasted until 12 November 2002, whereupon he was acquitted. The applicant's acquittal by the Cantonal Court in Sarajevo is not a final decision and is currently under appeal before the Supreme Court of the Federation of Bosnia and Herzegovina. During the period of the applicant's trial before the Cantonal Court in Sarajevo, the procedure relating to the prosecution of war crimes before the Cantonal Court in Zenica was stayed. The trial before the Cantonal Court in Zenica recommenced on 16 December 2002, and on 7 February 2003, the applicant was released on bail. As of the date of adoption of this decision, the applicant's trial before the Cantonal Court in Zenica remains pending.

2. The case raises issues under Article 5 paragraph 1(c), Article 5 paragraph 3 and Article 5 paragraph 4 of the European Convention on Human Rights (the "Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 12 November 2002 and registered on the same day. The applicant is represented by Mr. Fahrija Karkin, a lawyer practising in Sarajevo.

4. In his application to the Chamber, the applicant requested that the Chamber order the respondent Parties, as a provisional measure, to release him from detention. On 5 December 2002, the Chamber decided not to order the provisional measure requested, and on 12 December 2002, it transmitted the case to the Federation of Bosnia and Herzegovina for its observations on admissibility and merits in accordance with Rule 49(3)(b) of the Chamber's Rules of Procedure. The Chamber decided not to transmit the application to Bosnia and Herzegovina as a respondent Party. Accordingly, as the submissions of the respondent Party are only those of the Federation of Bosnia and Herzegovina, the reference throughout the decision to the "respondent Party", refers solely to the Federation of Bosnia and Herzegovina.

5. On 14 February 2003, the respondent Party submitted its written observations.

6. On 14 March 2003, the applicant submitted his reply to the written observations of the respondent Party.

7. On 21 April 2003, the respondent Party submitted additional information.

8. On 15 May 2003, the Chamber wrote to the respondent Party requesting additional information on the procedural decisions issued during the period from February to May 2001 by which the applicant's detention was extended. On 26 May 2003, this information was received from the respondent Party.

9. On 10 June 2003, the Chamber wrote to the respondent Party requesting additional information on all the procedural decisions issued subsequent to the filing of an indictment by which

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the applicant's detention was extended. On 20 June 2003, this information was received from the respondent Party.

10. On 16 July 2003, the Chamber wrote to the respondent Party requesting additional observations on the applicant's ability to challenge the lawfulness of his detention before the Cantonal Court in Zenica in accordance with Article 5(4) of the Convention and the procedure under domestic law. On 18 August 2003, this information was received from the respondent Party.

11. The Chamber deliberated on the admissibility and merits of the case on 5 December 2002, 9 May, 2 July, and 4 September 2003. On the latter date the Chamber adopted the present decision.

III. FACTS

A. Proceedings before the Municipal Court in Kiseljak

12. Since February 2000 the applicant has been the subject of a number of a criminal investigations initiated by the Police Administration in Kiseljak alleging offences of violence and disorderly conduct.

13. On 22 February 2000, criminal charges were filed against the applicant by the Police Administration in Kiseljak for the criminal offence of causing general damage under Article 304(1) of the Criminal Code of the Federation of Bosnia and Herzegovina (the "Criminal Code"). On 23 February 2000, a request for conducting an investigation against the applicant was submitted to the investigative judge of the Municipal Court in Kiseljak, and on 7 June 2000, a procedural decision was issued by which an investigation against the applicant was ordered. On 19 July 2000, the investigation against the applicant was completed and the case was transmitted to the Cantonal Prosecutor's Office in Zenica. On 11 October 2001, an indictment was filed against the applicant for the criminal offence of "violent behaviour" under Article 339(2) in conjunction with Article 339(1) of the Criminal Code and for the offence of causing general damage under Article 304(1) of the Criminal Code.

14. On 16 August 2000, additional criminal charges relating to separate events were filed against the applicant by the Police Administration in Kiseljak for the criminal offence of causing general damage under Article 304(1) of the Criminal Code. On 30 September 2000, a request was submitted to the Municipal Court in Kiseljak to collect all relevant reports from the Police Administration in Kiseljak. On 22 August 2000, a request for conducting an investigation against the applicant was submitted to the investigative judge of the Municipal Court in Kiseljak for the criminal offence of "violent behaviour" under Article 339(2) in conjunction with Article 339(1) of the Criminal Code and for the offence of "causing general damage to person or property" under Article 304(1) of the Criminal Code. On 6 November 2001, the Municipal Court in Kiseljak issued a procedural decision ordering an investigation against the applicant. On 25 March 2002, a second indictment was filed against the applicant for the criminal offence of violent behaviour under Article 339(2) in conjunction with Article 339(1) of the Criminal Code and for the offence of causing general damage under Article 304(1) of the Criminal Code.

15. On 21 August 2002, further criminal charges relating to separate events were filed against the applicant by the Police Administration in Kiseljak for the criminal offence of committing "grievous bodily harm" under Article 177(2) of the Criminal Code. On 13 January 2003, the investigation was completed and the case file was transmitted to the Cantonal Prosecutor's Office in Zenica. The Chamber has no information on the current status of the third criminal charges brought by the Police Administration in Kiseljak.

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B. Proceedings before the Cantonal Court in Zenica

16. During January 1997 documentation pertaining to the proposed prosecution of the applicant for war crimes was transmitted to the Office of the Prosecutor for the International Criminal Tribunal for the Former Yugoslavia (the "ICTY Prosecutor"). On 29 February 2000, in accordance with the Rome Agreement of 18 February 1996, the ICTY Prosecutor wrote to the Cantonal Prosecutor in Zenica authorising the prosecution of the applicant on the ground that there was a reasonable suspicion that he had committed a serious violation of international law.

17. On 9 August 2000, the investigative judge of the Cantonal Court in Zenica issued a procedural decision on conducting an investigation against the applicant on the ground that he was suspected of having committed the criminal offence of war crimes against the civilian population under Article 154(1) of the Criminal Code (see paragraph 51 below). On the same day, the Cantonal Court in Zenica issued a separate procedural decision ordering the arrest and pre-trial detention of the applicant for a period of one month in accordance with Article 188(1) of the Code of Criminal Procedure (see paragraph 61 below). The applicant's detention was ordered under the then applicable provision of Article 183(1) of the Code of Criminal Procedure (see paragraph 58 below), which prescribed mandatory pre-trial detention if there existed a "warranted suspicion" that a criminal offence, punishable by long term imprisonment, had been committed.

18. On 28 August 2000, the applicant was arrested and held in pre-trial detention.

19. On 26 September 2000, a Panel of Judges of the Cantonal Court in Zenica issued a procedural decision against the applicant, extending his detention for an additional period of two months in accordance with Article 188(2) of the Code of Criminal Procedure (see paragraph 61 below) on the basis that the applicants' detention was mandatory under Article 183(1) of the Code of Criminal Procedure.

20. On 23 November 2000, the Supreme Court of the Federation of Bosnia and Herzegovina (the "Supreme Court") issued a procedural decision against the applicant, by which it extended his detention for a further period of three months in accordance with Article 188(2) of the Code of Criminal Procedure (see paragraph 61 below). The extension of detention was ordered upon the recommendation of the investigative judge on the basis that the investigation had not been completed and that it had not been possible to hear all relevant witnesses. The applicant's detention was extended for the period stipulated by law, as the applicant's detention remained mandatory under Article 183(1) of the Code of Criminal Procedure.

21. On 5 February 2001, the investigative judge concluded the investigative proceedings, and on 20 February 2001, the Cantonal Prosecutor's Office in Zenica filed an indictment against the applicant within the time limit prescribed by Article 188(3) of the Code of Criminal Procedure (see paragraph 61 below). The indictment alleged that the applicant had committed numerous criminal offences during 1993, qualified in the indictment as war crimes against the civilian population under Article 154(1) of the Criminal Code.

22. On 27 February 2001, the Cantonal Court in Zenica issued a procedural decision extending the applicant's detention for a period of two months. In accordance with Article 190 of the Code of Criminal Procedure (see paragraph 62 below), detention may be extended until the conclusion of the main hearing once a bill of indictment has been filed. According to the same provision, detention may be extended or terminated by a decision of the Panel of Judges of the Cantonal Court at the expiry of the two-month period from the date on which the last decision was taken, and at that stage it must review whether grounds still exist for continued detention.

23. On 12 March 2001, the applicant filed an objection against the indictment. On 26 March 2001, the Cantonal Court in Zenica issued a procedural decision rejecting his objection.

24. On 5 May 2001, the Cantonal Court in Zenica issued a procedural decision in accordance with Article 190(2) of the Code of Criminal Procedure (see paragraph 62 below) by which the

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applicant's detention was extended for a further period of two months on the basis of the mandatory nature of Article 183(1) of the Code of Criminal Procedure (see paragraph 58 below).

25. On 6 May 2001, the first hearing in the main trial before the Cantonal Court in Zenica was scheduled. However, due to the unexpected illness of the presiding judge, the main trial was postponed.

26. On 12 June 2001, the Ministry of Justice of the Federation of Bosnia and Herzegovina, deciding upon the request of the President of the Cantonal Court in Sarajevo, with the consent of the President of the Cantonal Court in Zenica, issued a procedural decision ordering the applicant to be temporarily transferred to the Central Prison in Sarajevo for the purpose of conducting the criminal proceedings against him before the Cantonal Court in Sarajevo for the murder of the former Deputy Minister of Interior of the Federation of Bosnia and Herzegovina, Jozo Leutar.

27. On 10 July 2001 and 14 September 2001, the Cantonal Court in Zenica issued separate procedural decisions extending the applicant's detention for further periods of two months on the same ground as mentioned in the procedural decision of 5 May 2001.

28. On 8 November 2001, the High Representative issued the Decision of the Law of Amendments to the Code of the Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 50/01), abolishing the measure of mandatory detention by deleting Article 183(1) of the Code of Criminal Procedure. As a result, the until then second paragraph of Article 183 is, as of 8 November 2001, Article 183(1).

29. On 12 November 2001, the applicant submitted a request to the Cantonal Court in Zenica for termination of his detention. On the same day, the Cantonal Court in Zenica by its procedural decision once again extended the applicant's detention on the basis of the now Article 183(1) of the Code of Criminal Procedure, on the grounds that there existed a real risk that he would commit further offences and that he might attempt to influence witnesses. In this regard, the Cantonal Court in Zenica stated that there was information in the case file suggesting that the applicant had attempted, through M.I., an intermediary, to influence two witnesses, and that it was necessary to hear new witnesses at the main hearing who had not been heard during the investigative proceedings. It was also pointed out that other criminal proceedings were being conducted before the Cantonal Court in Sarajevo against the applicant for the criminal offence of terrorism. Additionally, several other criminal charges had been filed against him for other criminal offences, which justified the fear that if released, the applicant would commit further criminal offences.

30. On 15 November 2001, the Cantonal Court in Sarajevo issued a procedural decision ordering the detention of the applicant. This decision states that it would enter into force only if and when the applicant's detention ordered by the Cantonal Court in Zenica is terminated. The Cantonal Court in Sarajevo ordered the detention of the applicant for the reason that it was conducting other criminal proceedings against the applicant and another five defendants for the criminal offence of terrorism.

31. On 16 November 2001, the applicant filed an appeal against the procedural decision of the Cantonal Court in Zenica of 12 November 2001 extending his detention on the basis of the amended Article 183(1) of the Code of Criminal Procedure. On 27 November 2001, the Supreme Court issued a procedural decision rejecting the applicant's appeal as ill-founded.

32. The Cantonal Court in Zenica extended the applicant's detention for additional periods of two months in accordance Article 190 of the Code of Criminal Procedure (see paragraph 62 below) by its procedural decisions of 25 January 2002, 2 April 2002, 3 June 2002, 8 August 2002 and 11 October 2002.

33. On 16 December 2002, one month after the conclusion of the proceedings before the Cantonal Court in Sarajevo, the applicant's trial for war crimes recommenced before the Cantonal

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Court in Zenica. At the first hearing, the Court rejected the applicant's proposal to terminate his detention.

34. On 17 December 2002, the Cantonal Court in Zenica extended the applicant's detention for an additional period of two months in accordance Article 190 of the Code of Criminal Procedure (see paragraph 62 below). The applicant filed an appeal against this procedural decision.

35. On 25 December 2002, the Supreme Court annulled the procedural decision of 17 December 2002 and returned the case to the Cantonal Court in Zenica for renewed proceedings, as the reasons for extension of detention were unclear. The Supreme Court stated in its decision that, should the Cantonal Court in Zenica propose that the detention of the applicant be extended, it must state in clear and unambiguous terms the reasons for the factual and legal grounds for issuing such an order.

36. On 27 December 2002, in the renewed proceedings, the Cantonal Court in Zenica issued a new procedural decision extending the applicant's detention for two months under Articles 183(1) and (3) of the Code of Criminal Procedure (see paragraph 58 below). The procedural decision highlighted the fact that several witnesses had not been heard and that it was alleged that the applicant had, through an intermediary, previously attempted to influence witnesses against him. Additionally, the Municipal Prosecutor has filed an indictment against the applicant for additional criminal offences that carry a sentence, if convicted, of more than 3 years imprisonment. The Cantonal Court in Zenica held that it had been established that the applicant might, if released, commit further offences and/or influence prosecution witnesses called to give evidence against him. The applicant submitted an appeal against this procedural decision.

37. On 14 January 2003, the Supreme Court issued a procedural decision rejecting the applicant's appeal as ill-founded.

38. On 7 February 2003, the Cantonal Court in Zenica issued a procedural decision terminating the applicant's detention. The Cantonal Court in Zenica held that the "risk of influencing witnesses" or "committing further offences" no longer persisted as valid grounds for detaining the applicant. On 10 February 2003, the Cantonal Prosecutor's Office in Zenica filed an appeal against the procedural decision of 7 February 2003.

39. On 18 February 2003, the Supreme Court, deciding upon the Cantonal Prosecutor's appeal, annulled the procedural decision of 7 February 2003 and returned the case to the Cantonal Court in Zenica to be reconsidered. The Supreme Court considered that the procedural decision of 7 February 2003 did not contain valid reasons for reaching the conclusion that the grounds for detaining the applicant had subsided.

40. On 20 February 2003, the Cantonal Court in Zenica, in renewed proceedings, issued a new procedural decision again terminating the applicant's detention on the ground that the court had established the correct factual and legal situation in its decision of 7 February 2003, although its reasons for reaching such a conclusion had not been explicitly set out in detail in that decision. In its procedural decision, the Court set out the reasons for reaching such a conclusion. The Cantonal Prosecutor's Office in Zenica again filed an appeal against the procedural decision terminating detention.

41. On 18 March 2003, the Supreme Court annulled the procedural decision of 20 February 2003 and again returned the case to be reconsidered.

42. On 27 March 2003, the Cantonal Court in Zenica for the third time issued a decision terminating the applicant's detention, and the Cantonal Prosecutor's Office in Zenica appealed against this procedural decision.

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43. On 10 April 2003, the Supreme Court issued a procedural decision rejecting the Cantonal Prosecutor's appeal. As of the date of adoption of this decision, the applicant's trial remains pending before the Cantonal Court in Zenica.

44. On 18 June 2003, the applicant's trial before the Cantonal Court in Zenica reconvened with the hearing of additional witnesses. It was thereafter adjourned until 11 July 2003, whereupon an additional two witnesses were to be heard. During this period, a third witness, a citizen of the Republic of Croatia was to be heard by the competent legal authority in the Republic of Croatia.

C. Proceedings before the Cantonal Court in Sarajevo

45. On 6 April 2000, the Cantonal Prosecutor submitted a request for the initiation of an investigation against the applicant in relation to the murder of the former Deputy Minister of Interior of the Federation of Bosnia and Herzegovina, Jozo Leutar. It was alleged that during March 1999 the applicant, along with five named others and other unnamed individuals, held a series of secret meetings in which they conspired to murder the former Deputy Federation Minister of Interior, Jozo Leutar. Jozo Leutar died on 28 March 1999 at Koševo Hospital, Sarajevo, as a result of serious head injuries received from an explosive device placed on the undercarriage of his official vehicle.

46. On 9 March 2001, the Cantonal Prosecutor filed an indictment against the applicant.

47. On 15 November 2001, the Cantonal Court in Sarajevo issued a procedural decision ordering the detention of the applicant for a period of two months commencing from the date on which the applicant's detention ordered by the Cantonal Court in Zenica was terminated or expired. The procedural decision never in fact entered into force as during the entirety of the proceedings before the Cantonal Court in Sarajevo, the applicant's continued detention was ordered by the Cantonal Court in Zenica.

48. In case nos. CH/02/11108 and CH/02/11326, *Basić & Ćosić*, decision on admissibility and merits of 5 May 2003, paragraphs 36-69, Decisions January – June 2003, the Chamber summarised the proceedings also in the present applicant's case before the Cantonal Court in Sarajevo, as these three applicants were tried together, as follows:

> "(36) On 7 June 2001 the main trial started at the Cantonal Court. On the same day, defence counsel for the second applicant requested an adjournment until 12 June 2001 in order to prepare a defence to the charges in the indictment. The main trial reconvened on 12 June 2001 and until 15 June 2001 the Court heard statements from the defendants. The trial was again adjourned on 15 June 2001 until 19 June 2001 at the request of a co-defendant. On 19 June 2001 the trial was again adjourned until 22 June 2001 due to "the expiry of working hours". The definition of "working hours" in this respect has not been clarified, but the Chamber understands this to mean that under existing court rules a court shall sit for a specified number of hours per week and that members of that court and staff, both legal and administrative, may have obligations to other cases. Therefore, if the total number of working hours permitted under existing court rules has been exceeded, then an adjournment may legitimately be ordered.
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> "(37) The trial was again adjourned on 23 June 2001 until 3 July 2001 due to a request for information submitted by the Cantonal Prosecutor to the Ministry of Interior of the Herzegovina-Neretva Canton. The Chamber has no information as to whether this request was complied with, and if so, the content of the information sought.
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> "(38) On 3 July 2001 the Court read out the written statements of the protected witnesses nos. 30 and 31. Thereafter, the trial was postponed until 6 July 2001 whereupon a new trial was ordered due to the death of one of the lay judges of the Panel. The new trial commenced on 10 July 2001.
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> "(39) On 12 July 2001 defence counsel for the second applicant failed to appear and the trial was consequently postponed until 17 July 2001. Between 17 and 27 July 2001 the trial was adjourned on two further occasions, although the reasons for this have not been stated. Between 27 July and 19

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September 2001 the trial was adjourned on three separate occasions due to objections raised by a co-accused concerning the calling of additional witnesses.

"(40) On 19 September 2001 the trial was postponed due to the summoning of expert witnesses.

"(41) On 28 September 2001 the trial was adjourned for an indefinite period following a proposal to disqualify the President of the Panel of Judges of the Cantonal Court, all other judges of the Cantonal Court, the President of the Supreme Court, the Deputy Cantonal Prosecutor and the Federal Prosecutor. The trial reconvened on 19 October 2001. It has not been stated, and it is not apparent from the documents submitted by any of the parties, whether either of the applicants submitted this request for disqualification.

"(42) On 26 October 2001 the trial was adjourned for reasons unknown to the Chamber.

"(43) On 8 November 2001 the trial was adjourned due to the Prosecutor being ill. Also on the same day new defence counsel of a co-accused requested an adjournment until 16 November 2001, on the ground that he needed to prepare a defence as he had just joined the proceedings.

"(44) On 19 November 2001 the first applicant submitted an appeal to the procedural decision of 15 November 2001, by which it was proposed to transfer competence from the Cantonal Court to the Supreme Court. This appeal was rejected on 23 November 2001. On 7 May 2002 the first applicant renewed his appeal and this was rejected by the Supreme Court on 16 May 2002.

"(45) On 21 November 2001 the trial was adjourned until 3 December 2001 and then again until 12 December 2001 at the request of a co-accused, although the reasons have not been specified to the Chamber.

"(46) On 12 December 2001 a new trial was ordered due to a change in the composition of the Panel of Judges. The following day, defence counsel of a co-accused submitted a proposal to disqualify all judges of the Cantonal Court. As a result of this proposal, the trial was adjourned until 27 December 2001. On that day, due to the failure to appear of defence counsel for both applicants, the trial was again adjourned until 10 January 2002.

"(47) Between 10 January 2002 and 13 February 2002 the trial was adjourned on seven separate occasions due to the hearing of various witnesses.[1] Only on one of these occasions the adjournment was at the request of the defence.

"(48) At the request of the Deputy Cantonal Prosecutor additional hearings were scheduled before the Supreme Court on 10 February and 18 June 2002 in respect of the protected witness no. 30 and on 18 February and 20 June 2002 in respect of the protected witness no. 31.

"(49) On 13 February 2002 the trial was adjourned until 19 February 2002 as defence counsel for the second applicant was absent due to participating in the World Karate Championship.

"(50) Between 19 February 2002 and 3 April 2002 the trial was adjourned on seven separate occasions as a result of hearing additional witnesses, reading witness statements and the fact that the case file had not been returned from the Supreme Court on time.

"(51) On 3 April 2002 the trial was adjourned until 11 April 2002 at the request of the Cantonal Prosecutor in order to obtain additional evidence. The case file was subsequently sent to the Supreme Court and on 11 April 2002, when the trial was scheduled to reconvene, it was established that the case file had once again not been returned from the Supreme Court. The trial was accordingly adjourned until 22 April 2002.

"(52) On 24 April 2002 the trial was adjourned for an indefinite period following the proposal by an unnamed party to disqualify the President of the Panel of Judges of the Cantonal Court. The trial reconvened on 6 May 2002.

"(53) Between 7 May 2002 and 21 May 2002 the trial was adjourned on four separate occasions due to the reading of witness statements. On 22 May 2002 the trial was adjourned until

[1] The precise reasons as to why an adjournment was required each time a witness was heard have not been clarified. It appears to be standard practice in the Courts of the Federation of Bosnia and Herzegovina.

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28 May 2002 after hearing witnesses proposed by the second applicant and on 28 May 2002 it was again adjourned until 29 May 2002 due to the non-appearance of defence counsel of three of the defendants.

"(54) On 29 May and 7 June 2002 the trial was adjourned in order to obtain new evidence and on 12 and 21 June 2002 it was again adjourned due to the case file being submitted to the Supreme Court and the protected witnesses being heard.

"(55) On 26 and 27 June 2002 the case was adjourned due to the non-appearance of defence counsel for a co-accused.

"(56) On 3 and 5 July 2002 the trial was adjourned in order to present new evidence and to subpoena documents from the Federation Ministry of Interior.

"(57) Between 10 and 16 July 2002 the trial was adjourned for reasons unknown to the Chamber.

"(58) Between 16 and 31 July 2002 the trial was adjourned on five separate occasions in order to hear additional evidence, receive documentation, obtain and secure video evidence and the summoning and hearing of defence witnesses.

"(59) On 6 August 2002 the trial was adjourned until 20 August 2002 and then again until 23 August 2002 due to the non-appearance of defence counsel of a co-accused.

"(60) On 23 August 2002 the trial was adjourned until 27 August 2002 in order for the Panel of Judges to rule on the admissibility of evidence, the hearing of witness testimony and to obtain documentation from the Ministry of Interior.

"(61) On 27 August 2002 the trial was adjourned until 3 September 2002 in order to request the minutes from the hearings conducted by the investigating judge.

"(62) On 3 September 2002 the trial was adjourned in order to obtain video footage in relation to the protected witness no. 30 from the investigating judge. The trial reconvened on 11 September 2002 for the presentation of the video footage and was thereafter adjourned until 13 September 2002 in order to rule on the admissibility of certain evidence proposed by the parties.

"(63) On 13 September 2002 the trial was adjourned until 18 September 2002 and then again until 20 September 2002 at the request of a co-accused. On 20 September 2002 the trial was again adjourned until 25 September 2002 at the request of a co-accused.

"(64) On 25 September 2002 a procedural decision was issued by the Cantonal Court by which the presentation of evidence was concluded. The trial was thereafter adjourned until 3 October 2002 whereby closing speeches would be presented.

"(65) On 3 October 2002 the Deputy Cantonal Prosecutor gave his closing speech, summarising the facts and requesting the Court to convict the defendants. Thereafter the defendants entered their pleas and statements. At the request of the first applicant and a co-accused, the defence closing speeches were adjourned until 7 October 2002.

"(66) On 7 October 2002 the applicants and a co-accused were re-examined. The trial was thereafter adjourned until the following day whereupon the parties would give their closing speeches. From 8 October until 7 November 2002 the Court heard the parties' closing speeches. During this period the trial was adjourned on fourteen separate occasions.

"(67) On 7 November 2002 the trial was concluded and adjourned until 12 November 2002 whereupon the verdict would be delivered.

"(68) On 12 November 2002 the applicants were acquitted of all charges by the Cantonal Court and released from detention.

"(69) On 11 February 2003, upon receipt of the written first instance judgment, the Cantonal Prosecutor submitted an appeal against the first instance judgment to the Supreme Court."

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D. Conclusion on the facts

49. At the time of adoption of the present decision, the applicant's trial for war crimes remained pending before the Cantonal Court in Zenica. The last hearing scheduled in the case was on 11 August 2003, when additional witnesses were heard. However, the Chamber has no information as to the expected conclusion of the trial. In relation to the applicant's trial for his alleged involvement in the murder of the former Deputy Minister of Interior of the Federation of Bosnia and Herzegovina, the Chamber recalls that his acquittal by the Cantonal Court in Sarajevo is not a final and binding decision and is currently under appeal before the Supreme Court of the Federation of Bosnia and Herzegovina. The remaining charges filed against the applicant by the Municipal Prosecutor in Kiseljak, as detailed in paragraphs 12 to 15 above, remain pending before the Municipal Court in Kiseljak, and the Chamber has no information on the current status of these proceedings.

IV. RELEVANT DOMESTIC LAW[2]

A. Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 2/99, 15/99, 29/00, 59/02 and 19/03)

50. Article 4 of the Criminal Code provides:

> "(1) The law that was in effect at the time of committing the criminal offence shall be applied to the perpetrator of the criminal offence.
>
> "(2) If the law has been altered in one or more occasions after the criminal offence has been committed, then the law which is less severe in relation to the perpetrator shall be applied."

51. Article 154 of the Criminal Code provides for the criminal offence of war crimes against the civilian population and provides, insofar as is relevant:

> "(1) Whoever in violation of rules of international law applicable in time of war, armed conflict or occupation, orders an attack at the civilian population, settlement, individual civilians or persons unable to fight, which results in death, grave bodily injuries or serious damage to people's health; … in the civilian population being subjected to killings, torture, inhuman treatment, … immense sufferings or violation of bodily integrity or health; … rapes; … application of measures of intimidation and terror, unlawful holding in concentration camps and other illegal arrests and detentions, … forced labour, … pillaging, illegal and self-willed destruction or stealing on large scale of property that is not justified by military needs, … or who commits one of the foregoing acts, shall be punished with a sentence of imprisonment for not less than five years or long term imprisonment…."

52. Article 146 of the Criminal Code provides:

> "Terrorism
>
> "(1) Whoever, with the intention of jeopardising the Federation, its constitutional establishment or its highest authorities, kidnaps a person or commits another violent act, causes an explosion, fire or by some other generally dangerous action or by use of generally dangerous means causes danger to life and highly valuable property, shall be punished with a sentence of imprisonment for not less than one year.
>
> "…

[2] The Chamber notes that on 1 August 2003 the new Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 36/03) and the new Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 35/03) entered into force. However, during the period considered in the present decision the criminal proceedings before the Cantonal Court in Sarajevo and the Cantonal Court in Zenica were not subject to the new Criminal Code or Code of Criminal Procedure. Accordingly, the Chamber has not assessed the applicant's complaints in relation to the new legal provisions.

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"(3) If while committing the act from paragraph 1 of this Article the perpetrator intentionally kills a person, he/she shall be punished with imprisonment of at least ten years; or with long term imprisonment." [3]

B. Criminal Code of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina nos. 16/92, 21/92, 13/94, 28/94, 33/94)

53. The provisions of the criminal code set out in the Criminal Code of the Socialist Federal Republic of Yugoslavia, were adopted as the law of the Republic of Bosnia and Herzegovina by the Decree With the Force of Law issued by the Presidency on 11 April 1992. The Criminal Code of the Republic of Bosnia and Herzegovina was published in the Official Gazette of the Republic of Bosnia and Herzegovina (no. 2/92) on 11 April 1992. It was promulgated during the state of war as the Decree With the Force of Law, and was later approved by the Assembly of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina no. 13/94 on 9 June 1994).

54. Article 142, concerning war crimes against the civilian population, provides as follows:

"(1) Whoever in violation of rules of international law applicable in time of war, armed conflict or occupation, orders an attack at the civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damage to people's health; … in the civilian population being subjected to killings, torture, inhuman treatment, … immense sufferings or violation of bodily integrity or health; … rapes; … application of measures of intimidation and terror, unlawful holding in concentration camps and other illegal arrests and detentions, … forced labour, … pillaging, illegal and self-willed destruction or stealing on large scale of property that is not justified by military needs, … or who commits one of the foregoing acts, shall be punished with a sentence of imprisonment for not less than five years or the death penalty.

C. Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 23/99, 50/01 and 27/02):

55. Article 28 of the Code of Criminal Procedure provides:

"(1) If an individual has been charged with several crimes, some of those crimes lying in the jurisdiction of a lower court and others in the jurisdiction of a higher court, then the higher court shall be competent, and if the courts are at the same level, then that court which first commenced proceedings in response to the complaint of an authorised prosecutor shall be competent; but if proceedings have not yet commenced, then the first court with which a complaint is filed to initiate proceedings shall be competent to try the case.

"(2) Competent jurisdiction shall also be determined in accordance with the provisions of paragraph 1 of this Article if the injured party simultaneously committed a crime against the accused.

"(3) As a rule, the court which first commenced proceedings as the competent court for one co-accused shall be competent to try all co-accuseds.

"(4) The court competent to try the perpetrator of a crime shall as a rule also be competent to try the accomplices, accessories by virtue of concealment, accessories after the fact who aided the perpetrator, and persons who failed to report the preparation of the crime, the committing of the crime or the identity of the perpetrator.

"(5) In all the cases referred to in paragraphs 1 through 4 of this Article, joint proceedings shall as a rule be conducted, and a single judgment shall be rendered.

[3] The term "long term imprisonment" is defined under Article 38 of the Criminal Code as between 20 and 40 years imprisonment.

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"(6) The court may decide to conduct joint proceedings and render a single judgment when several individuals have been charged with several crimes, but only if there is a mutual relation among the crimes which were committed and if the evidence is the same. If a higher court is competent to try some of those crimes and a lower court is competent to try others, then joint proceedings may be conducted only before the higher court.

"(7) The court may decide to conduct joint proceedings and make a single decision if separate proceedings are conducted before the same court against the same person for a number of criminal acts, or against several persons for the same criminal act.

"(8) The court competent to conduct joint proceedings shall make the decision on joinder of actions. No appeal is permitted against an order to join proceedings or a decision rejecting a motion for joinder.

"(9) The provisions of this Article shall also be followed if joint proceedings are to be conducted for several crimes for which the competent courts are in different cantons."

56. Articles 178 and 181 of the Code of Criminal Procedure sets out the procedure for applying for release on bail:

Article 178

"An accused who is to be taken into custody or who has already been taken into custody solely because of a fear that he will flee may be left at liberty or released if he personally or someone else on his behalf furnishes surety that he will not flee before the end of criminal proceedings, and the accused himself pledges that he will not conceal himself and will not leave the place where he resides without permission."

Article 181

"(1) The decision on bail shall been made during the examination by the investigative judge. After the indictment has been brought, the decision on bail shall be made by the panel of judges.

"(2) The decision setting bail and the decision cancelling the bail bond shall be made after hearing the competent prosecutor, if proceedings are being conducted upon his petition."

57. Article 182 of the Code of Criminal Procedure provides:

"(1) Custody may be ordered only under the conditions envisaged in this Law.

"(2) The duration of custody must be reduced to the shortest necessary time. It is the duty of all bodies and agencies participating in criminal proceedings and of agencies extending legal aid to proceed with particular urgency if the accused is in custody.

"(3) Throughout the proceedings custody shall be terminated as soon as the grounds on which it was ordered cease to exist."

58. Article 183 of the Code of Criminal Procedure provides:

"(1) Custody shall always be ordered against a person if there is a warranted suspicion that he has committed a crime for which the law prescribes a sentence of long-term imprisonment.[4]

"(2) If there are grounds for suspicion that a person has committed a crime, but the conditions do not exist for mandatory custody, then custody may be ordered against that person in the following cases:

(i) if he conceals himself or if other circumstances exist which suggest the strong possibility of flight;

[4] The Decision of the Law of Amendments to the Code of Criminal Procedure, which entered into force on 8 November 2001, abolished the measure of compulsory detention by deleting Article 183 paragraph 1 of the Code of Criminal Procedure. Article 183 paragraph 2 is now to be referred to as paragraph 1 (Official Gazette of the Federation of Bosnia and Herzegovina no. 50/01).

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(ii) if there is a warranted fear that he will destroy, hide, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, fellow accused or accessories in terms of concealment;

(iii) if particular circumstances justify the fear that the crime will be repeated or an attempted crime will be completed or a threatened crime will be committed and for those offences a sentence of imprisonment of three years or a more severe penalty is prescribed;

(iv) if the crime is one for which, because of the manner of execution or the consequences of the crime, detention is necessary for the safety of the citizenry. These include crimes envisaged in the Criminal Code of the Federation: terrorism (Article 146)…;

"(3) In the case referred to in paragraph 2, point 2 of this Article, custody shall be terminated as soon as the evidence is obtained for which custody was ordered."

59. Article 184 of the Code of Criminal Procedure provides:

"(1) Custody shall be ordered by the investigative judge of the competent court.

"(2) Custody shall be ordered in a written decision containing the following: the first and last name of the person being taken into custody, the crime he is charged with, the legal basis for custody, an instruction as to the right of appeal, a brief substantiation in which the basis for ordering custody shall be specifically argued, the official seal, and the signature of the judge ordering custody.

"(3) The arrest warrant shall be presented to the person to whom it pertains at the moment when he is apprehended, and no later than within 24 hours from the moment he is deprived of liberty. The time of his deprivation of liberty and the time of presentation of the warrant must be indicated in the record.

"(4) An individual who has been taken into custody may appeal the arrest warrant to the panel of judges (Article 21 paragraph 6) within 24 hours from the time when the warrant was presented. If the person taken into custody is examined for the first time after that period has expired, he may file an appeal at the time of his examination. The appeal, a copy of the transcript of the examination if the person taken into custody has been examined, and the arrest warrant shall be immediately delivered to the panel of judges. The appeal shall not stay execution of the warrant."

60. Article 185 of the Code of Criminal Procedure provides:

"(1) The investigative judge must immediately inform a person who has been deprived of liberty and brought before him of the reasons for depriving him of liberty, that he may engage defence counsel, who may attend his examination, and, if necessary, he shall help him to find defence counsel. He shall warn him of the rights under Article 67 of this Law. If within 24 hours of the date of this communication a person taken into custody does not provide for the presence of defence counsel, then the investigative judge must immediately examine that person."

"…"

61. Article 188 of the Code of Criminal Procedure provides:

"(1) On the basis of the investigative judge's decision, the accused may not be held in pre-trial custody more than 1 month from the date of his apprehension. At the end of that period the accused may be kept in custody only on the basis of a decision to extend pre-trial custody.

"(2) Pre-trial custody may be extended a maximum of 2 months under a decision of the panel of judges (Article 21 paragraph 6). An appeal is permitted against the panel's decision, but the appeal does not stay execution of the decision. If proceedings are conducted for a crime carrying a prison sentence of more than 5 years or a more severe penalty, then a panel of the Supreme Court of the Federation may for important reasons extend pre-trial custody by not more than another 3 months. The decision to extend pre-trial custody shall be made on the reasoned recommendation of the investigative judge.

"(3) If a bill of indictment is not brought before the expiration of the period referred to in paragraph 2 of this Article, then the accused shall be released."

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62. Article 190 of the Code of Criminal Procedure provides:

"(1) Once the bill of indictment has been presented to the court and until the end of the main trial, custody may be ordered or terminated only by a decision of the panel of judges after hearing the competent prosecutor, if proceedings are being conducted on his petition.

"(2) At the end of 2 months from the date when the last decision on custody became valid, even in the absence of motions by the parties, the panel shall examine whether the grounds still exist for custody and shall make a decision to extend or terminate custody.

"(3) An appeal against the decision referred to in paragraphs 1 and 2 of this Article shall not stay execution of the decision.

"(4) An appeal is not permitted against the decision of the panel which rejects a proposal to order or to terminate pre-trial custody."

63. Chapter XXI, Part IV of the Code of Criminal Procedure defines the circumstances for postponement and adjournments of the main trial:

Article 299

"(1) Aside from the cases specifically provided for in this Law, the main trial shall be postponed by a decision of the panel if new evidence needs to be obtained,…if there are other impediments to the effective conduct of the main trial.

"(2) The decision adjourning the main trial shall when possible fix the day and hour when the main trial will resume. In that same decision the panel may specify that evidence be obtained which could be lost through the effect of time.

"(3) No appeal is permitted against the decision referred to in paragraph 2 of this Article."

Article 300

"(1) A main trial which is adjourned must commence anew if the composition of the panel has changed, but after the principals have been examined, the panel may decide that in such a case the witnesses and experts shall not be examined again and that a new on-the-spot inquest will not be performed again, but that the testimony of witnesses and experts given in the previous main trial shall be read or the record of the on-the-spot inquest will be read.

"(2) If a main trial which was adjourned is held before the same panel, then it shall be resumed, and the presiding judge shall briefly summarise the course of the previous main trial, but even in that case the panel may order that the main trial recommence from the beginning.

"(3) If the adjournment has lasted longer than 1 month, or if the main trial is being held before another presiding judge, then the main trial must begin from the beginning, and all evidence must again be presented."

Article 301

"(1) Aside from the cases specifically provided for in this Law, the presiding judge may declare an adjournment of the main trial for rest or because the working hours have passed or so that certain evidence may quickly be obtained, or for the purpose of preparing the prosecution or defence.

"(2) A main trial which has been adjourned shall always resume before the same panel.

"(3) If a main trial may not be resumed before the same panel, or if the adjournment of the main trial has lasted longer than 8 days, then the procedure called for in the provisions of Article 300 of this Law shall be followed."

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V. COMPLAINTS

64. The applicant specifically complains that his detention, both during the pre-trial stage and on remand, was unlawful under Article 5(1)(c) of the Convention, that the length of his overall detention exceeded the reasonable time requirement under Article 5(3) of the Convention, and that the judge before whom he was brought to review his continued detention was not a judge within the meaning of Article 5(3) of the Convention as he had no power to release him. The applicant also considers that the Cantonal Prosecutor's Office in Zenica should have qualified the offence with which he is charged under the milder criminal code and that is, according to his opinion, the Criminal Code of Socialist Federal Republic of Yugoslavia (see paragraph 54 above), which was applicable as the law of the Republic of Bosnia and Herzegovina at the time of the alleged commission of the offences with which he is charged. The applicant also considers that the two indictments raised against him by the Cantonal Prosecutor's Office in Zenica and the Cantonal Prosecutor's Office in Sarajevo should have been joined in order to expedite the proceedings and safeguard his right to be tried within a reasonable time.

65. The applicant considers that his right to freedom and security of person, as guaranteed under Article 5(1)(c) and 5(3) of the Convention, as well as his right to freedom from retroactive criminal legislation, as guaranteed under Article 7 of the Convention, have been violated.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party[5]

1. Admissibility

66. As to the admissibility of the application, the respondent Party proposes that the application be declared inadmissible as the applicant failed to exhaust all effective domestic remedies. The respondent Party points out that neither the applicant nor his defence counsel filed appeals against the procedural decisions extending detention issued on 25 January 2002, 3 June 2002, 8 August 2002 and 11 October 2002.

2. Merits

67. As to the merits, the respondent Party points out that domestic legal provisions, as well as Article 5 of the Convention, have been fully complied with. It states that the applicant was deprived of his liberty and held in detention in accordance with the law, as under the circumstances there was a "warranted suspicion" that he had committed the criminal offence with which he was charged, for the purpose of bringing him before the competent legal authority. Deciding on the extension of his detention, the courts took into account that several criminal charges had been brought against the applicant by the Municipal Prosecutor's Office in Kiseljak. Additionally, the court considered that a third person being charged with attempting to influence witnesses in relation to applicant's case was an additional ground for denying bail. The respondent Party also points out that the fact that the applicant was released on 7 March 2003, when reasons for extending detention ceased to exist, although the trial has not yet been concluded, is clear evidence that the organs of the respondent Party complied with Article 5(1) of the Convention.

68. In relation to the allegation that the period of detention from 27 April 2001 to 5 May 2001 was not covered by a procedural decision extending detention, the respondent Party states that a procedural decision was issued by the Cantonal Court in Zenica on 27 February 2001, by which the applicant's detention was ordered for an additional period of two months. The respondent Party states that the decision did not enter into force until 6 March 2001; therefore, the period under

[5] As the application has not been transmitted to Bosnia and Herzegovina, the submissions of the respondent Party are only those of the Federation of Bosnia and Herzegovina.

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consideration was covered by a lawful order, and, prior to its expiration, another procedural decision was issued by the Cantonal Court in Zenica on 5 May 2001. Accordingly, the applicant's detention was at all times covered by lawful orders issued by the relevant court.

69. As to Article 5(3) of the Convention, the respondent Party points out that immediately after his deprivation of liberty, the applicant was brought before the investigative judge. It further points out that it is correct that at first the applicant's detention was ordered on the basis of Article 183(1) of the Code of Criminal Procedure, which provided for mandatory detention. However, even then the investigative judge could have terminated detention if he considered that no "warranted suspicion" existed. Subsequent to the High Representative's decision of 8 November 2001, the applicant's detention was ordered under the amended Article 183(1) of the Code of Criminal Procedure on the grounds of hindering criminal proceedings by influencing witnesses and the possibility that additional criminal offences would be committed if released. The respondent Party points out that the circumstances of the case, as well as legal logic, indicate that detention against the applicant would have been ordered for these reasons, even without the existing provision on mandatory detention.

70. The respondent Party points out that the subject matter of the application is the detention ordered by the Cantonal Court in Zenica. Apart from the length of the detention during the investigation, filing the indictment and the time needed for scheduling the first hearing before the Cantonal Court in Zenica, the length of detention is directly connected with the length of the proceedings conducted against the applicant before the Cantonal Court in Sarajevo. The Cantonal Court in Zenica scheduled the first hearing in the applicant's case on 16 May 2001. However, the Presiding Judge was unexpectedly taken ill, thus preventing the commencement of the main trial. In the meantime, the trial before the Cantonal Court in Sarajevo commenced. Except for the detention during the criminal proceedings before the Cantonal Court in Sarajevo, the Cantonal Court in Zenica fully respected the applicant's right to be tried within a reasonable time or to be released pending trial. The respondent Party considers that the length of the detention against the applicant was therefore justified taking into consideration the length of the proceedings against the applicant in Sarajevo, which were extremely complicated. The detention against the applicant was also ordered by the Cantonal Court in Sarajevo, as detention can be extended only on the ground of the offence for which it was originally ordered. Accordingly, even if the Cantonal Court in Zenica had terminated the applicant's detention, it would have automatically been continued on the basis of the procedural decision of 15 November 2001 issued by the Cantonal Court in Sarajevo.

71. The respondent Party further submits that, due to the complexity of both proceedings, it was not justified to conduct both proceedings concurrently, or to join them, as the applicant's right to defence would have been violated. For that reason, the Cantonal Court in Zenica did not schedule hearings against the applicant whilst the trial before the Cantonal Court in Sarajevo was ongoing.

72. In relation to Article 5(4) of the Convention, the respondent Party states that by complying with the Code of Criminal Procedure no issue under Article 5(4) arises. The respondent Party states in relation to the requirement of "speedy determination" that upon the issuance of a decision ordering detention an appeal may be submitted within 24 hours and that a decision on the appeal will be issued within 48 hours of the appeal. Moreover, on the issuance of a decision extending detention, an appeal may be submitted against the decision within 3 days, although no time is set under the law for deciding upon the appeal. The respondent Party states that the Code of Criminal Procedure prescribes an obligation to act with urgency in cases when a defendant is being detained. The case law of the Cantonal Court in Zenica and the Supreme Court of the Federation of Bosnia and Herzegovina indicate that this is followed in practice. Accordingly, the applicant had the opportunity, both under the law and in practice, to request his release. The applicant made two such requests and on the second occasion he was in fact released.

73. The respondent Party points out that under the Code of Criminal Procedure, the court determines detention in the absence of the parties and no hearing is conducted. Under Article 190(2) of the Code of Criminal Procedure, there is no requirement to notify the defendant, his defence counsel or the prosecutor in advance of a decision being issued. The need for continued detention is reviewed *ex officio* every two months. However, this does not mean that the rights of the

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parties are excluded, as they are aware that detention will be reviewed bi-monthly and may submit written argument to the court. The respondent Party declares that the applicant never took advantage of this right, except during the main trial. The respondent Party further states that the Cantonal Court in Zenica gave precise reasons for the extension of detention against which either party was permitted to appeal.

74. In relation to whether the right to challenge the lawfulness of detention is effective in practice, the respondent Party points out that prior to the amendment of Article 183(1) of the Code of Criminal Procedure by the High Representative on 9 November 2001, the applicant would have had no possibility of being released as detention was mandatory. Subsequent to the amendment, the respondent Party states that there were "real possibilities" for the applicant to be released if he successfully challenged the lawfulness of his detention.

B. The applicant

75. The applicant disputes the respondent Party's allegations in their entirety. He points out that appeals were not submitted against some of the procedural decisions because detention during that period was mandatory. In addition, all procedural decisions stated the same reasoning as mentioned in previous procedural decisions. He further points out that the appeal was filed against the procedural decision ordering detention by the Cantonal Court in Sarajevo, but it was rejected by the Supreme Court. He submits that an absurd situation existed in which a "double" detention was ordered, thus filing appeals would make no sense.

76. The applicant further points out that the period of his detention from 27 April 2001 to 5 May 2001 was unlawful, as no procedural decision had been issued subsequent to the expiration of the two-month period from the procedural decision of 27 February 2001. He also asserts that the Cantonal Court should have joined both cases and conducted single proceedings as it was to his benefit. He also points out that the proceedings before the Cantonal Court in Sarajevo lasted an unjustifiably long time.

VII. OPINION OF THE CHAMBER

A. Admissibility

77. Before considering the merits of the application, the Chamber must first decide whether it is admissible, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted and whether the application has been filed within six months from such date on which the final decision was taken. Article VIII(2)(c) states that the Chamber shall dismiss any application it considers incompatible with the Agreement, manifestly ill-founded or an abuse of the right to petition.

1. As directed against Bosnia and Herzegovina

78. The applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the Chamber on its own motion find any such evidence. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina.

2. Complaints relating to detention

79. The respondent Party submits that the applicant failed to exhaust the domestic remedies available to him. It states that the applicant had the right to submit appeals against all procedural decisions extending his detention, but in particular, he failed to submit appeals against the

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procedural decisions of 25 January 2002, 3 June 2002, 8 August 2002 and 11 October 2002. Moreover, the respondent Party has stated that the applicants' detention, up until the issuance of its procedural decision of 15 November 2001 in accordance with the decision of the High Representative of 7 November 2001 (see paragraph 58 and footnote 3 above), was governed by the former Article 183(1) of the Code of Criminal Procedure by which detention was mandatory once a reasonable suspicion had been shown.

80. As the Chamber established in the *Buzuk* case (see case no. CH/01/7488, *Vlatko Buzuk*, decision on admissibility and merits of 3 July 2002, paragraphs 98 to 101, Decisions July-December 2002), this provision removed judicial discretion on review of detention. The domestic courts were obliged to apply a legal provision that was incompatible with the Convention. The Chamber therefore finds that the applicant could not be expected to submit appeal after appeal where there was no possibility of success for the period up until the issuance of the procedural decision of 12 November 2001. Accordingly, the Chamber will not declare the applications inadmissible on the ground of failure to exhaust domestic remedies in relation to detention for the period up until 12 November 2001.

81. For the period subsequent to the issuance of the procedural decision of 12 November 2001, the Chamber notes that the applicant submitted an appeal challenging the grounds given in the procedural decision of 12 November 2001. Thereafter, the applicant submitted appeals and requests for termination of detention on 17 and 27 December 2002, but he failed to submit appeals against the procedural decisions issued on 25 January, 2 April, 3 June, 8 August and 11 October 2002. The applicant contends that the procedural decisions extending his detention merely repeated the grounds as stated in previous decisions without going into the legal and factual reasons as to why they were applicable.

82. The Chamber takes note of the respondent Party's objection that the applicant failed to appeal every procedural decision extending his detention, but it recalls from the *Bašić and Ćosić* decision (see the above-mentioned *Bašić & Ćosić* decision, paragraphs 116-117), that Article VIII(2)(a) requires applicants to make "normal use" of available remedies that are "likely to be adequate and effective". The Chamber notes that those procedural decisions extending detention that the applicant failed to appeal restated one or several of the grounds for detention on remand that the domestic courts, deciding on the applicant's previous appeals, had found to be applicable to the applicant. Thus, in the absence of new facts that could have moved the court to reconsider its decision, the applicant had no reasonable prospect of being more successful by appealing every single decision extending his detention. On this ground, the Chamber finds that the applicant made "normal use" of available remedies that were "likely to be adequate and effective" in respect of his detention.

83. Accordingly, the Chamber does not consider that the fact that the applicant failed to appeal some of the procedural decisions for the period subsequent to 12 November 2001 precludes it under Article VIII(2)(a) of the Agreement from examining these periods of detention on the merits.

3. Complaints relating to the prohibition on retroactive criminal legislation

84. The applicant complains that he should have been charged under Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (see paragraph 54 above), the applicable law at the time the offences are alleged to have been committed. He argues that the fact that he was charged under Article 154 of the Criminal Code of the Federation of Bosnia and Herzegovina, which provides for a more severe sentence than was applicable at the relevant time, is in violation of Article 7 of the Convention.

85. Article 7(1) of the Convention provides as follows:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

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86. The Chamber notes that the applicant's complaint falls under the second limb of Article 7(1), in that a stiffer penalty may be imposed than was applicable at the time of allegedly committing the offence with which he is charged. The Chamber recalls that Article 7 of the Convention applies to the imposition of a criminal penalty. In this respect, the Chamber notes that 'penalty' for the purposes of Article 7 is given an autonomous meaning, and, provided the measure or sanction was imposed following a conviction by a criminal court, the Chamber may examine its substance and severity in determining whether it amounts to a penalty. However, in the present case, the Chamber notes that the applicant has not been convicted by a court and no penalty has been imposed upon him. Accordingly, such a complaint falls outside the ambit of Article 7 in the absence of a conviction and sentence.

87. The Chamber finds, therefore, that the application in respect of Article 7 of the Convention does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application in this respect inadmissible.

4. Conclusion as to admissibility

88. The Chamber finds that no other ground for declaring the application inadmissible has been established. Accordingly, the Chamber declares the application under Articles 5(1)(c), 5(3) and 5(4) of the Convention admissible, while it declares the remainder of the application inadmissible.

B. Merits

89. Under Article XI of the Agreement, the Chamber 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.

1. Article 5(1) of the Convention

90. Article 5(1) of the Convention provides as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> "…
>
> "(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

a. In accordance with a procedure prescribed by law

91. The applicant complains that the entirety of his detention was not in accordance with a procedure prescribed by law.

92. In determining the lawfulness of detention, the Chamber must first examine whether domestic legal provisions were followed and whether such provisions are compatible with the Convention.

93. The Chamber recalls that in examining the lawfulness of detention consideration must be given to whether the detention conforms with the substantive and procedural rules of domestic law

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and, even if in compliance with domestic law, whether detention was nevertheless arbitrary (Eur. Court HR, *Kemmache v. France (No. 3)*, judgment of 24 November 1994, Series A no. 296-C, paragraphs 36-37).

94. The respondent Party states that domestic law was respected at all times and the applicant's detention was governed by Article 183 of the Code of Criminal Procedure during the pre-trial stage, and upon the filing of a bill of indictment, his detention was governed by Article 190 of the Code of Criminal Procedure.

i. Detention prior to the filing of an indictment

95. The Chamber notes that the applicant was arrested on 28 August 2000 and held in pre-trial detention for a period of one month on the basis of the procedural decision of 9 August 2000 in accordance with Article 188(1) of the Code of Criminal Procedure (see paragraph 61 above). On 26 September 2000, his detention was extended for an additional period of two months, and on 23 November 2000, his detention was extended for an additional period of three months pursuant to Article 188(2) of the Code of Criminal Procedure (see paragraph 61 above). Accordingly, during the period leading up to the filing of an indictment on 20 February 2000, the applicant's detention was in accordance with a procedure prescribed by domestic law.

ii. Detention subsequent to the filing of an indictment

96. The Chamber recalls that under Article 190 of the Code of Criminal Procedure (see paragraph 62 above), once a bill of indictment has been filed, detention may only be extended or terminated by a decision of the Panel of Judges of the Cantonal Court (paragraph 1) and at the expiry of the two-month period from which the last decision became valid,[6] it must review whether grounds still exist for continued detention.

97. As noted above the domestic courts were required to review the applicant's detention two months from the date on which the last decision became valid. The Chamber notes that procedural decisions relating to his detention were issued in the applicant's case on the following dates:

- 27 February 2001, which became valid on 6 March 2001, thereby expiring on 6 May 2001;
- 5 May 2001, which became valid on 11 May 2001, thereby expiring on 11 July 2001;
- 10 July 2001, which became valid on 16 July 2001, thereby expiring on 16 September 2001;
- 14 September 2001, which became valid on the date of issuance, thereby expiring on 14 November 2001;
- 12 November 2001, which was appealed against by the applicant and which, the Supreme Court having rejected the appeal on 27 November 2001, expired on 27 January 2002;
- 25 January 2002, which became valid on 2 February 2002, thereby expiring on 2 April 2002;
- 2 April 2002, which became valid on 6 April 2002, thereby expiring on 6 June 2002;
- 3 June 2002, which became valid on 10 June 2002, thereby expiring on 10 August 2002;
- 8 August 2002, which became valid on 16 August 2002, thereby expiring on 16 October 2002;
- 11 October 2002, which became valid on 18 October 2002, thereby expiring on 18 December 2002;
- 17 December 2002, which was appealed against by the applicant and which the Supreme Court accepted on 25 December 2002 and referred the matter back for reconsideration;
- 27 December 2002, which was appealed against by the applicant and which the Supreme Court on 14 January 2003 rejected and expired on 14 March 2003; and
- 7 February 2003, the Cantonal Court in Zenica issued a decision ordering his release.

98. In its written observations of 26 May and 20 June 2003, the respondent Party stated that the procedural decisions extending detention did not become valid on the date of issuance, but at some later stage, as noted above and detailed in the procedural decisions. The calculation of the two-month period is therefore from the date that the decision became valid in accordance with Article

[6] For the purposes of Article 190, it is important to note that the procedural decision extending detention does not become a "valid" decision until the time limit for submitting an appeal has expired or an appeal submitted against the procedural decision has been finally dealt with.

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190(2) of the Code of Criminal Procedure (see paragraph 62 above). Accordingly, the periods under consideration were covered at all times by lawful orders extending his detention.

99. The Chamber recalls that Article 5(1) of the Convention states that an individual may only be detained "in accordance with a procedure prescribed by law" and provided that such detention falls within one of the conditions contained within subparagraphs (a) to (f). The Chamber notes that under Article 190(2) of the Code of Criminal Procedure, detention shall be reviewed two months from the date when the last decision became valid. The procedural decision does not become a "valid" decision until the time limit for submitting an appeal has expired or an appeal submitted against the procedural decision has been finally dealt with. Therefore, on examination of the dates of the procedural decisions extending detention, as set out above during the period from the filing of an indictment until the applicant's release on 7 February 2003, the authorities reviewed the applicant's detention at bi-monthly intervals on the expiration of the time period from when the last decision became valid. Accordingly, the applicant's detention was in accordance with a procedure prescribed by domestic law.

b. Reasonable suspicion

100. The applicant further alleges that his arrest and detention was "unlawful" as no reasonable suspicion existed. The respondent Party states, without going into the factual assessment, that a reasonable suspicion existed that the applicant had committed the offences with which he was charged and that his arrest was necessary to bring him before the competent legal authorities in accordance with Article 5(1)(c) of the Convention and Article 183 of the Code of Criminal Procedure.

101. The Chamber recalls that Article 5(1)(c) of the Convention permits detention on "reasonable suspicion" of having committed a criminal offence or to prevent flight after having committed an offence for the purpose of bringing the individual before the competent legal authority. It is not in dispute that the intention was to bring the applicant before the "competent legal authority". However, what amounts to a "reasonable suspicion" depends upon the facts of the case judged at the time of arrest.

102. The Chamber recalls that the test of "reasonable suspicion" under Article 5(1)(c) of the Convention requires the domestic authorities to consider, at the time the arrest is made, the existence of facts or information which would satisfy an objective observer that the person concerned *may* have committed the offence. It is not necessary that sufficient evidence be provided at that early stage. Accordingly, the object of police questioning at this stage is to confirm or dispel reasons for the arrest and therefore the threshold is relatively low at this early stage. In this respect, the Chamber is satisfied that at the time of the applicant's arrest, a reasonable suspicion existed that justified his initial detention.

103. The Chamber further notes that the applicant was detained for a long period on the ground of a reasonable suspicion. It would seem that whilst such grounds are sufficiently adequate during the investigative stage, they may cease to be so after the passage of time. However, the Chamber recalls, as was stated in *De Jong, Baljet & Van Den Brink v. Netherlands* (Eur. Court HR, judgment of 22 May 1984, Series A no. 77, paragraph 44), that the question of whether detention remains reasonable after a certain lapse of time is not covered by Article 5(1)(c) but by Article 5(3) of the Convention (*see also* Eur. Court HR, *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, paragraph 35).

c. Conclusion as to Article 5(1) of the Convention

104. For these reasons, the Chamber concludes that there has been no violation of Article 5(1)(c) of the Convention in this respect.

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2. Article 5(3) of the Convention

105. The applicant further claims that his rights as guaranteed under Article 5(3) of the Convention have been violated.

106. Article 5 paragraph 3 of the Convention, insofar as relevant, provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time, or to release pending trial…".

107. The Chamber recalls that the purpose of Article 5(3) of the Convention is to prevent individuals from being arbitrarily deprived of their liberty and to ensure that the period of detention following arrest is kept as short as possible (Eur. Court HR, *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, paragraph 30). The Chamber notes that the applicant's complaint raises two issues under Article 5(3). Firstly, in accordance with the Chamber's previous jurisprudence (see the above-mentioned *Buzuk* decision, paragraphs 98 to 101), that the investigating judge before whom the applicant was brought was not a "judge or other officer authorised by law" for the purposes of Article 5(3) of the Convention. Secondly, the applicant claims that he was entitled to be released pending trial due to the length of the proceedings.

a. First limb: requirement of being brought promptly before a judge or other officer authorised by law to exercise judicial power

108. The Chamber recalls that the applicant was arrested on 28 August 2000 and brought before the investigative judge at some stage shortly thereafter. The applicant has not complained that the length of time from his arrest until first appearance was unduly long, and therefore, no issue as to "promptness" under Article 5(3) arises.

109. The next consideration is whether the investigative judge that the applicant was brought before may be considered "a judge or other officer authorised by law to exercise judicial power" for the purposes of Article 5(3). In *Schiesser* (see the above-mentioned *Schiesser v. Switzerland* decision, paragraphs 30-31), the European Court of Human Rights laid down criteria for determining whether a person can be regarded as such an officer. It noted that, whilst the meaning of "officer authorised by law" is not the same as "judge", the former must have some of the latter's attributes.

i. independence from the executive and from the parties;
ii. the officer is obliged to hear personally the applicant brought before him; and
iii. there is a substantive requirement which places the officer under an obligation to review "the circumstances militating for or against detention" and to decide "by reference to legal criteria whether there are justifications for maintaining detention" and, if there are not, to order the release.

110. The Chamber notes that there is no indication of a lack of impartiality or independence on the part of the investigative judge, neither is it suggested that the investigative judge failed to hear the applicant personally. Accordingly, the Chamber will confine its assessment of the proceedings solely to the third criterion. In *Buzuk* (see the above-mentioned *Buzuk* decision, paragraphs 99 and 100), the Chamber stated:

> "99. The third criterion places a positive obligation on the "judge" or "officer authorised by law" to consider the reasons for maintaining detention. Moreover, it requires that the "judge" or "officer authorised by law" must have the power to discontinue detention if there are no justifications for continuing detention. In *De Jong, Baljet and Van Den Brink v. The Neth*erlands (Eur. Court HR, judgment of 4 May 1984, Series A no. 77), the European Court of Human Rights held, referring to the requirements in *Schiesser*, that if an officer of the court lacked the power to release the applicant, then the continued detention would be unlawful in this respect. In the present case, the applicant's pre-trial detention was ordered on the basis of the then Article 183, paragraph 1 of the Code of Criminal Procedure. This provided for mandatory pre-trial detention if there existed a "warranted suspicion" that the offence had been committed. The judge was prevented from considering the

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elements contained in Article 183, paragraph 2 (now to be read as Article 183, paragraph 1), requiring deliberation of the risk of flight, tampering with evidence, influencing witnesses or repetition of offences.

"100. The European Court of Human Rights has consistently stated that in any case where judicial discretion is removed by law this will be incompatible with the Convention and any detention based on such provisions unlawful... In the instant case, the power of the judge to release the applicant was not entirely removed, as the judge could still have ordered the applicant's release if he had found that there was no "warranted suspicion" that the applicant committed the offences he was charged with. However, the Chamber finds that in the circumstances, taking the domestic provisions into consideration, the investigative judge did not have any discretion to review the circumstances militating for or against detention, such as, (1) danger of failure to appear for trial, (2) interference with the course of justice, (3) prevention of further offences, (4) the preservation of public order and (5) consideration of the presumption of innocence. The investigative judge also could not exercise discretion by reference to legal criteria whether there were justifications for maintaining detention and if there were not, to order the release, as stated in paragraph 31 of *Schiesser*."

111. The respondent Party states that it is correct that the applicant was detained in part under the former Article 183(1) of the Code of Criminal Procedure, which provided for mandatory detention. However, the respondent Party states that the investigative judge retained the power to release the applicant if he considered that there was no "warranted suspicion". Accordingly, the investigative judge possessed the necessary characteristics to be considered a "judge or other officer of the court" within the meaning of Article 5(3). The respondent Party disputes that the application of the mandatory detention automatically invokes a violation of Article 5(3) of the Convention in this respect.

112. The Chamber recalls that the European Court has consistently stated that in any case where judicial discretion is removed by law, this will be incompatible with the Convention and any detention based on such provisions unlawful (see, *e.g.*, the above-mentioned *De Jong, Baljet and Van Den Brink v. The Netherlands* judgment at paragraphs 47-48). Therefore, the fact that additional reasons supporting the detention may have existed is irrelevant if the investigative judge has no power to consider them. Moreover, the fact that the investigating judge was competent and required to examine the reasonableness of the suspicion against the applicant is not sufficient for the purpose of Article 5(3) of the Convention (see the above-mentioned *Buzuk* decision, paragraphs 99-100, quoted above).

113. The Chamber concludes, in accordance with its previous jurisprudence, that the investigative judge whom the applicant was brought before on 28 August 2000, was not a judge for the purposes of Article 5(3) of the Convention, as he had no discretion to release the applicant once he had established that there existed a "warranted suspicion" that he had committed the offences with which he was charged. Accordingly, for the period from 28 August 2000 until 12 November 2001, the respondent Party violated the applicant's rights as guaranteed under the first limb of Article 5(3) of the Convention.

b. Second limb: entitlement to trial within a reasonable time, or to release pending trial

114. The applicant also complains that he was detained for an unreasonable length of time, thus constituting a violation of the second limb of Article 5(3) of the Convention.

i. Period to be taken into consideration

115. The Chamber recalls, as a preliminary point, that the jurisprudence of the Chamber interpreting the jurisprudence of the European Court, has consistently determined that "reasonable length" in this context does not only refer to the processing of the prosecution up to the commencement of the trial, but also to the length of the overall detention (see the above-mentioned

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Buzuk decision, paragraph 103, citing Eur. Court HR, *Neumeister v. Austria*, judgment of 7 May 1974, Series A no. 8).

116. The period to be taken into consideration for the purposes of Article 5(3) of the Convention, that covers pre-trial detention and detention on remand, began on 28 August 2000, when the applicant was arrested, and ended on 7 February 2003, with the applicant's release following the decision of the Cantonal Court in Zenica terminating his detention. It therefore lasted two years, five months and ten days.

ii. Reasonableness of the length of the detention

117. In determining whether the overall length of the applicant's detention during this period was reasonable, the Chamber notes that the European Court is reluctant in applying any rigid test and will instead apply a case-by-case assessment.

118. The Chamber notes that it falls in the first place to the domestic authorities to ensure that, in a given case, the overall detention of an accused person does not exceed a reasonable time. To this end the domestic court must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty. The domestic court must set those reasons out in its decisions on the applications for release (see, *e.g.*, the above-mentioned *Bašić & Ćosić* decision, paragraphs 164-165, citing Eur. Court HR, *Toth v. Austria*, judgment of 25 November 1991, Series A no. 224, paragraph 67). It is therefore essentially on the basis of the reasons given in these decisions and of the facts mentioned by the applicant in his applications for release and his appeals that the Chamber is called upon to decide whether or not there has been a violation of Article 5(3) (see also the above-mentioned *Neumeister v. Germany* decision at page 37, paragraphs 4-5).

119. The Chamber recalls that the European Court has consistently stated that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of continued detention, but, after a certain lapse of time, it no longer suffices. The Chamber must then establish whether the other grounds cited by the domestic courts continued to justify the deprivation of liberty (see, *e.g.*, Eur. Court HR, *Kemmache v. France*, judgment of 27 November 1991, Series A no. 218, paragraph 45). Where such grounds were "relevant" and "sufficient", the Chamber must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings and whether the subject matter for consideration was particularly complex in nature, thus justifying such length. Additionally, the Chamber must also examine whether the applicant or his lawyers have contributed to any delay in the proceedings, as an applicant cannot properly complain of delay in the proceedings for which he is the architect.

a) Relevant and sufficient reasons

120. The Chamber recalls that the European Court has consistently stated that grounds which the Court will accept as justification for continued detention of individuals prior to and during their criminal trial may include:

i. If, from the severity of the proposed sentence, and the detainee's own circumstances, it is likely that he or she will escape;

ii. If it appears likely that the accused person will interfere with the course of justice, by destroying documents or colluding with other possible suspects and interfering with witnesses, continued detention will be justified;

iii. The public interest in the prevention of crime is another ground for justification; this will be relevant if there are good reasons to believe that the accused will re-offend on release and a genuine requirement of public interest, notwithstanding the presumption of innocence, outweighs the respect for individual liberty;

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iv. The final ground for continuing detention is the preservation of public order, although this argument will only succeed if there is objective justification for the prospect of a risk to public order posed by the accused's release.

121. The Chamber recalls that it has already found a violation of the first limb of Article 5(3) (see paragraphs 108 to 113 above) for the period from 28 August 2000 until the issuance of the procedural decision of 12 November 2001 for the reason that the judicial authorities had no power to review the grounds for detaining the applicant once it had been established that there existed a warranted suspicion that he had committed the offence with which he was charged. Accordingly, the Chamber will not examine the reasons given for extending detention for the period up until 12 November 2001. However, the Chamber will take into consideration that upon the issuance of the procedural decision of 12 November 2001, the applicant had already been held in pre-trial detention for almost fifteen months.

122. In dismissing the applicant's requests for release, subsequent to the issuance of the procedural decision of 12 November 2001, the Cantonal Court in Zenica put forward in essence two reasons:

i. In accordance with Article 183(2)(ii) of the Code of Criminal Procedure, there was a warranted fear that if released the applicant would attempt to influence or intimidate witnesses; and

ii. In accordance with Article 183(2)(iii) of the Code of Criminal Procedure, detention may be ordered or extended against an individual if particular circumstances justify the fear that the crime will be repeated or an attempted crime will be completed or a threatened crime will be committed and for those offences a sentence of imprisonment of three years or a more severe penalty is prescribed.

Moreover, the Cantonal Court in Sarajevo put forward a third reason on which to base the applicant's detention:

iii. In accordance with Article 183(2)(iv) of the Code of Criminal Procedure, it is specifically provided that for the offence of terrorism under Article 146 of the Criminal Code, detention may be ordered if necessary for the safety of citizenry, thus satisfying the fourth criterion above of "preservation of public order".

However, the applicant was never detained on the basis of this procedural decision.

123. On examination of the procedural decisions issued by the domestic courts, the Chamber is satisfied that the risk of interfering with witnesses and the fear of repeating further offences were periodically reviewed, thus satisfying the requirement of "relevant" and "sufficient" reasons. Additionally, the Chamber is aware, as was stated in the *Bašić and Ćosić* decision, of the inherent problems in assessing the necessity of detention, both during the pre-trial stage and on remand, in cases of organized crime and terrorism and that the same difficulties are inherent in the prosecution of war crimes. To find that insufficient reasons were given in the present case would impose such a strict duty on the domestic courts that it would be virtually impossible to detain individuals pre-trial and on remand during the main trial. The Chamber therefore declines to do so.

b) The conduct of the proceedings

124. The Chamber recalls that if the prolonging of detention on remand is based on well-founded reasons, then the question remains whether the domestic authorities displayed "special diligence". In this respect the question cannot be answered in the abstract and Article 5(3) does not imply a maximum length of detention. Instead, the European Court of Human Rights attaches particular importance to the complexity of the case, the conduct of the domestic authorities and the conduct of the applicant. If the length of detention on remand does not appear connected to the complexity of the case or the conduct of the applicant and the authorities have not acted with necessary promptness, then Article 5(3) will be violated (see, *e.g.*, Eur. Court HR, *Tomasi v. France*, judgment of

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27 August 1992, Series A no. 241-A). Moreover, the mere fact that the domestic authorities have shown that “relevant and sufficient” reasons existed will not exonerate them of their duty to expedite the proceedings, as what may be considered relevant and sufficient during the early stages of the proceedings may cease to be considered so after the passage of time. In *Kemmache v. France* (Eur. Court HR, judgment of 27 November 1991, Series A no. 218, paragraph 52), the European Court made it clear that detention may only be justified for as long as the risk persists.

125. The respondent Party contests that the overall length of detention was unreasonable. It states that the applicant was detained to stand trial before the Cantonal Court in Zenica, and the first hearing in his case was scheduled on 16 May 2001. However, due to the unexpected illness of the presiding judge, the proceedings were postponed. Shortly thereafter, the trial before the Cantonal Court in Sarajevo was scheduled to commence. The respondent Party states that the length of the applicant’s detention was “directly related to the proceedings before the Cantonal Court in Sarajevo”, which were extremely complicated. The respondent Party further maintains that due to the complexity it was not justified to conduct both proceedings concurrently or to join them. For this reason, the Cantonal Court in Zenica did not schedule any hearings during the period in which the applicant’s trial before the Cantonal Court in Sarajevo took place.

126. As previously stated, the applicant was arrested on 28 August 2000, and on 20 February 2001, the Cantonal Prosecutor’s Office in Zenica filed an indictment. The first hearing before the Cantonal Court in Zenica took place on 16 May 2001, and no further hearings were scheduled until 16 December 2002. In relation to the applicant’s trial before the Cantonal Court in Sarajevo, an indictment was filed on 9 March 2001, and on 7 June 2001, the first hearing in the main trial took place. The Chamber recalls from its assessment of the pertinent facts in the *Bašić and Ćosić* decision (see paragraph 48 above) that the criminal trial against the applicant was adjourned on ninety-seven separate occasions between 7 June 2001 and 12 November 2002. The respondent Party submitted that such a high number of adjournments were, to a considerable extent, the responsibility of the applicants Bašić and Ćosić and their co-defendants, including the applicant in the present case. However, upon examination of the documents submitted by the respondent Party in the *Bašić and Ćosić* decision, the Chamber noted that eighty-five separate adjournments were addressed, of which twenty-two adjournments were ordered at the request of the Bašić and Ćosić applicants or their co-defendants, twenty-nine adjournments by the organs of the respondent Party and thirty-four adjournments detailed without any reasons submitted. However, the Chamber noted that despite such a high number of adjournments, there were no lengthy periods of inactivity in the proceedings before the Cantonal Court in Sarajevo.

i) Complexity

127. As the Chamber has consistently stated, in assessing the diligence of the domestic authorities it is important to consider the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses required, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial. The Chamber notes in this respect that both proceedings against the applicant raised some difficult questions of fact and law, which legitimately contributed to the lengthening of the proceedings.

ii) Conduct of the domestic authorities

128. The Chamber recognises that Article 5(3) imposes a strict requirement that, once the court has ordered that an accused must remain in custody pending trial, special diligence must be exercised and priority given to the accused’s trial. However, this requirement must be carefully balanced against the duty of the court to fully ascertain the facts and permit the parties to thoroughly present their respective cases.

129. The Chamber recalls that as a result of the applicant being transferred from Zenica to stand trial before the Cantonal Court in Sarajevo, the proceedings before the Cantonal Court in Zenica were stayed. The Chamber notes that the applicant’s rights were taken into consideration when

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considering whether to join the proceedings or to run both proceedings concurrently. On consideration of the applicant's rights and the rights of his co-defendants standing trial before the Cantonal Court in Sarajevo, it was concluded to stay the proceedings. The Chamber finds that the decision to stay proceedings was reasonable taking into consideration the complexity of both proceedings and the legitimate expectation concerning the estimated length. However, whilst it is recognised that the stay of proceedings was reasonable, this places a particular obligation on the organs of the respondent Party to expedite proceedings and to exercise "special diligence" in the proceedings before the Cantonal Court in Sarajevo.

130. In relation to the applicant's trial before the Cantonal Court in Sarajevo, the Chamber held in the *Bašić and Ćosić* decision (see the above-mentioned *Bašić and Ćosić* decision, paragraphs 178-181) on consideration of the same proceedings, as follows:

> "178. The Chamber notes that the delays in the proceedings in the applicants' case, in particular the length of detention during trial, appears to be due to certain "systematic" problems. Firstly, the trial was restarted on 12 December 2001 due to the change in composition of the panel of lay judges for the reason that their mandate had expired in accordance with Article 300(1) of the Code of Criminal Procedure …. The Chamber notes that their mandate expired just six months after the commencement of the main trial and although the Court could not have known the exact length of the main trial, it could have contemplated such a problem arising. Additionally, the Chamber notes that the trial was previously halted on 6 July 2001 due to the death of a lay judge, and whilst no blame may be attributed for such an unforeseeable eventuality, the Chamber notes with concern that in such an important criminal trial no contingency plans are made for the withdrawal of a judge for any reason whatsoever. It is the practice in many European countries for alternate judges to follow the proceedings in case of such an emergency so that a judge may be replaced without disrupting the proceedings and without causing unnecessary delay. Accordingly, the Chamber notes that the death of one lay judge and the expiration of a second lay judge's mandate caused some delay to the proceedings.
>
> "179. Secondly, it appears to be the practice of the Courts in the Federation of Bosnia and Herzegovina to adjourn the proceedings after the hearing of a witness, sometimes for several days at a time. Such an eventuality is not expressly provided for under the Code of Criminal Procedure concerning postponement and adjournments of the main trial and is therefore governed by the general principles under Article 299(1) and Article 301(1) of the Code of Criminal Procedure …. Nevertheless, the Chamber recalls that the domestic authorities are required to give priority to individuals held in detention and to exercise due diligence.
>
> "180. Thirdly, the Chamber notes that, according to the respondent Party, the Cantonal Court is overburdened with criminal cases and its insufficient administrative and judicial staff means that it is unable to complete its caseload in a timely manner. Additionally, according to Article 301(1) of the Code of Criminal Procedure … an adjournment may be ordered on the expiry of working hours … or indeed for a "rest". In this respect, the Chamber notes that, at any one time, the Cantonal Court is obliged to hear a number of cases concurrently, thereby causing delay to the final conclusion of individual cases. This means that in any given case, hearings will be scheduled less frequently depending upon the caseload of the Court or the individual Panel of Judges. In such circumstances, it is not uncommon for a case to be listed for merely one or two hearings per month. However, the Chamber reiterates that in such an important criminal trial where the applicants were held in detention for a lengthy period of time, the domestic authorities are required to organise their caseload in such a way as to be able to deal with individual cases expeditiously.
>
> "181. Fourthly, the very strict six-month limitation on pre-trial detention from arrest until the filing of a bill of indictment appears to have resulted in the investigation continuing while the trial is already in course. This is evidenced in the present case by a number of adjournments at the request of the Cantonal Prosecutor in order to locate additional witnesses and secure supplementary evidence in accordance with Article 299(1) of the Code of Criminal Procedure …. This inevitably causes additional delay. The Chamber notes that the strict six-month period provided under Article 188 of the Code of Criminal Procedure for the filing of the indictment forces the prosecuting authorities to act very expeditiously in this phase, also in a complex case as the present one. However, the benefit of this six-month deadline is lost when the court, after the confirmation of the indictment, gives the prosecuting authorities unlimited latitude to continue investigating the case and allows the trial to be significantly delayed for that purpose." (citations omitted).

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131. The Chamber is mindful of the difficulties in processing the two trials concurrently and repeats that the joinder or concurrent running of the proceedings would have prolonged the proceedings before the Cantonal Court in Sarajevo even further, thereby extending the applicant's detention. The Chamber is also mindful of the fact that upon completion of the first instance proceedings before the Cantonal Court in Sarajevo, proceedings commenced before the Cantonal Court in Zenica within a period of less than one month. However, due to the amount of time that had already passed, the Chamber is of the opinion that, in consideration of the particular facts of the case, the authorities failed to display the "special diligence" required to comply with its obligations under Article 5(3) of the Convention, particularly in light of the fact that the stay of proceedings before the Cantonal Court in Zenica lasted for almost nineteen months.

iii) Conduct of the applicant

132. The respondent Party has not suggested that the conduct of the applicant contributed to the length of proceedings in any way.

133. The Chamber recalls that from the *Bašić and Ćosić* decision (see the above-mentioned *Bašić and Ćosić* decision, paragraph 182), it held that an accused is under no obligation to assist the prosecution in expediting their case. Additionally, the Chamber noted that the delays caused by the defendants in the proceedings before the Cantonal Court in Sarajevo had contributed "partially" to the delay in the proceedings before the Cantonal Court in Sarajevo.

iii. Conclusion as to the reasonable length of detention

134. As the Chamber had cause to state in the *Bašić & Ćosić* decision, the administrative running of a legal system is the responsibility of the respondent Party and any delays caused as a result will be directly attributable to the respondent Party. Additionally, it is the responsibility of the respondent Party to organise its judicial system in such a way as to ensure the reasonably expeditious conduct of individual cases and to organise its legal system so as to allow the courts to comply with the requirements of Article 5(3) and equally Article 6(1) of the Convention. It is thus apparent that the length of proceedings is attributable only partly to the complexity of the case and the conduct of the applicant. Having regard to the characteristics of the investigation and the substantial delays in the court proceedings, the Chamber considers that the domestic authorities did not act with the "special diligence" required under Article 5(3) of the Convention in relation to the proceedings before the Cantonal Court in Sarajevo.

135. Against the above background, the Chamber finds that the overall period spent by the applicant in detention, including pre-trial detention and detention on remand, exceeded a "reasonable time". There has thus been a violation of Article 5(3) of the Convention in this respect.

c. Conclusion as to Article 5(3) of the Convention

136. To sum up, the Chamber therefore finds, that the applicant was not brought before a "judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5(3), from his arrest until 12 November 2001, and that the length of his detention from arrest until his eventual release on 7 February 2003 exceeded the limits of reasonableness. Consequently, the respondent Party violated the applicant's rights as guaranteed by Article 5 paragraph 3 of the Convention.

3. Article 5(4) of the Convention

137. Article 5 paragraph 4 of the Convention, insofar as relevant, provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

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138. The Chamber notes that under domestic law, detention is initially governed by Article 188 of the Code of Criminal Procedure (see paragraph 61 above), which provides under paragraph 1 that detention may be ordered upon the investigative judge's decision for a period of one month. Under paragraph 2, detention may then be extended for a period of two months by a decision of the Panel of Judges of the Cantonal Court, and thereafter for an additional period of three months by a decision of the Panel of Judges of the Supreme Court. Once a bill of indictment has been filed and until the end of the main trial, detention may only be extended by the Panel of Judges of the Cantonal Court after hearing the competent prosecutor. An appeal may be submitted against a decision extending detention as mentioned under Articles 188 and 190 of the Code of Criminal Procedure, but an appeal will not stay execution of the decision, and there is no provision under the law for a public hearing on appeal. Additionally, Articles 178 and 181 of the Code of Criminal Procedure (see paragraph 56 above) sets out the procedure for applying for release during the pre-trial stage and on remand. The Chamber notes that in this respect there is no provision that would require the applicant to be heard in person, or through his legal representative, when he applies to be released pending trial or on appeal.

139. The applicant complains that he was unable to challenge the lawfulness of his detention. He states that his detention was repeatedly extended without consideration of the factual and legal circumstances of his case and without scheduling any hearings for a period of two years and three months.

140. The respondent Party submits that by complying with domestic law, no issue under Article 5(4) of the Convention arises. The respondent Party further submits that in relation to the requirement of "speedy determination" under the provision, an appeal may be submitted within 24 hours of detention being ordered and that a decision must be issued by the court within 48 hours of the appeal. Moreover, on the issuance of a decision extending detention, an appeal may be submitted against the decision within 3 days, although no time is set under the law for deciding upon the appeal, the Code of Criminal Procedure prescribes an obligation to act with urgency in cases when a defendant is being detained. As to the requirement to hear the parties, the respondent Party submits that the Code of Criminal Procedure does not create an obligation to hear the parties or to hold a public hearing for consideration on extension of detention except in circumstances where the matter is raised during the main trial. The domestic law provides that the Panel of Judges reviews *ex officio* the reasons for detention and determines whether legal conditions are met for continuing detention. Upon receipt of the procedural decision ordering or extending detention, the applicant has the right to submit an appeal.

141. The respondent Party states that the parties are aware that detention is reviewed bi-monthly and can therefore submit written argument to the court. The respondent Party points out, however, that in practice the parties are not informed as to when detention will be reviewed and are not permitted to attend a hearing during which they may put forward argument.

142. The Chamber recalls that the applicant's detention was at all times governed by procedural decisions of the Cantonal Court in Zenica, whilst he was detained and standing trial before the Cantonal Court in Sarajevo. During that period, from March 2001 to November 2002, no hearings were scheduled and the applicant was never produced before the Panel of Judges of the Cantonal Court in Zenica who dealt with his detention.

143. The Chamber recalls that the right of *habeas corpus*, the right to judicial review of the lawfulness of detention, entitles a detained person to take proceedings by which the lawfulness of his detention is decided speedily by a court and his release ordered if his detention is not lawful (see, *e.g.*, case no. CH/00/3880 *Marjanović*, decision of admissibility and merits 11 October 2001, paragraphs 161-163, Decisions July – December 2002). The European Court of Human Rights has explained that the requirement that lawfulness of detention be decided "by a court" implies that the procedural guarantees that have been established through the jurisprudence on Articles 5 and 6 of the Convention defining a "court", such as independence, impartiality and the power to give a legally binding decision, apply also for the purposes of Article 5(4). Additionally, the principle of equality of

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arms that has been inferred into Article 6 of the Convention, equally applies to Article 5(4), and the procedure adopted must ensure equal fair treatment and be truly adversarial (see, *e.g.*, Eur. Court HR, *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, paragraph 84). The detained person must be given an opportunity to challenge the submissions of the prosecution (see, *e.g.*, Eur. Court HR, *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, paragraph 29) and be given an adequate opportunity to prepare an application for release (see, *e.g.*, Eur. Commission HR, *Farmakopoulos v. Belgium*, application no. 11683/85, decision of 4 December 1990). Article 5(4) generally requires that a detained person or his legal representative be entitled to participate in an oral hearing in order to maintain the fundamental guarantee against arbitrariness (see, *e.g.*, Eur. Court HR, *Keus v. Netherlands*, judgment of 25 October 1990, Series A no. 185-C, paragraph 27).

144. Recently, in *Niedbala v. Poland* (Eur. Court HR, judgment on the merits of 4 July 2000, paragraphs 66-67), the first of a series of applications considering the Polish Code of Criminal Procedure, the European Court examined the position under the previous Polish Criminal Code of Procedure that did not permit a detained person or his legal representative to be present during review of his detention. The European Court held:

> "(66) The Court recalls that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 154-B, p. 34, § 65). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation 131(see the *Megyeri v. Germany* judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22), it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see the above-mentioned *Schiesser* judgment, p. 13, §§ 30–31, the *Sanchez-Reisse v. Switzerland* judgment of 21 October 1986, Series A no. 107, p. 19, § 51, and the *Kampanis v. Greece* judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47). In particular, in the proceedings in which an appeal against detention order is being examined, "equality of arms" between the parties, the prosecutor and the detained person must be ensured (*Nikolova v. Bulgaria* (G.C.), no. 31195/96, 25.03.1999, § 59).
>
> "(67) …The Court notes that it is not contested that the law, as it stood at that time, did not entitle either the applicant himself or his lawyer to attend the court session. Moreover, the applicable provisions did not require that the prosecutor's submissions in support of the applicant's detention be communicated either to the applicant or to his lawyer. Consequently, the applicant did not have any opportunity to comment on those arguments in order to contest the reasons invoked by the prosecuting authorities to justify his detention. The Court finally notes that under applicable provisions of the law on criminal procedure it was open for the prosecutor to be present at any of court sessions in which the court examined the lawfulness of the applicant's detention and that on one occasion the prosecutor was present.

145. As in the *Niedbala* case decided by the European Court of Human Rights, in the present case, the Code of Criminal Procedure "did not entitle either the applicant himself or his lawyer to attend the court session" in which decisions on the extension of his detention were taken. Moreover, as the European Court noted with regard to the Polish Criminal Procedure Code, "the applicable provisions did not require that the prosecutor's submissions in support of the applicant's detention be communicated either to the applicant or to his lawyer. Consequently, the applicant did not have any opportunity to comment on those arguments in order to contest the reasons invoked by the prosecuting authorities to justify his detention." The same can be said of the applicable provisions of the Code of Criminal Procedure in this case.

146. Accordingly, the procedure by which the lawfulness of the applicant's detention was decided on was not consonant with the principle of equality of arms and thereby not "truly adversarial", as required by Article 5 paragraph 4.

147. There has therefore been a violation of Article 5(4) of the Convention in this respect.

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4. Conclusion as to the merits

148. The Chamber therefore finds, in conclusion, that the respondent Party has violated the applicant's rights as guaranteed under Article 5(3) in that for the period from 28 August 2000 until 15 November 2001, the investigative judge was not a "judge or other officer authorised by law to exercise judicial power" and that the length of the applicant's detention from arrest until release on 7 February 2003 exceeded the limits of reasonableness. Additionally, the failure to hold hearings by which the applicant or his legal representative were able to challenge the lawfulness of his detention amounts to a violation of Article 5(4) of the Convention. The Chamber does not, however, find any violation of the applicant's rights protected by Article 5(1)(c) of the Convention.

VIII. REMEDIES

149. 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 breaches of the Agreement, which it has found, "including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures". The Chamber is not limited to the requests of the applicant.

150. In his application to the Chamber the applicant requested to be released from pre-trial detention and for the Chamber to order the respondent Party to conduct his trial in accordance with the law. The applicant has not submitted any claims for compensation, but it is apparent from his application that he is seeking compensation for non-pecuniary damages in an unspecified amount. The respondent Party did not submit observations on any potential claims for compensation, but it has continually challenged the admissibility of the application.

151. The Chamber recalls that on 7 February 2003, the Cantonal Court in Zenica ordered the applicant's release from detention, as the reasons his detention had previously been ordered ceased to exist. In the light of the applicant's release, the Chamber considers that the present decision will somewhat constitute recognition of the wrongs done to the applicant. As to the request to order the respondent Party to conduct the applicant's trial in accordance with the law, the Chamber recalls that it has not found that the applicant's trial was conducted other than in accordance with the law. Accordingly, it would not be appropriate to issue such an order.

152. The Chamber notes that it has established serious violations of Article 5 paragraphs 3 and 4 of the Convention in the present case. It finds it appropriate, considering the case in general terms, and following its previous jurisprudence (see, *e.g.*, the above-mentioned *Bašić & Ćosić* decision, paragraphs 210-211), to award the applicant compensation for non-pecuniary damage for the harm suffered in the amount of 5,000 Convertible Marks (*Konvertibilnih Maraka*, "KM"). This amount is to be paid within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

153. The Chamber will now turn to the question of compensation for legal costs and expenses incurred in the proceedings before the Chamber. The Chamber finds it appropriate in the present case, taking into consideration that the applicant's legal representative has submitted a number of written submissions at the request of the Chamber, to order the respondent Party to pay compensation for legal costs and expenses to the applicant in the amount of KM 1,000. This amount is to be paid within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. As to legal costs and expenses incurred in the domestic proceedings, as the Chamber has previously stated (see, *e.g.*, the above-mentioned *Bašić & Ćosić* decision, paragraph 212), the applicant may be entitled to recover any costs and expenses incurred under Articles 88 to 95 of the Code of Criminal Procedure after the decision of the domestic courts becomes final and binding.

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154. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in paragraphs 152 and 153 for the implementation of the compensation awards in full or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

155. For the above reasons, the Chamber decides,

1. unanimously, to declare the application as directed against Bosnia and Herzegovina inadmissible;

2. unanimously, to declare admissible the application as directed against the Federation of Bosnia and Herzegovina under Articles 5 paragraph 1(c), 5 paragraph 3 and 5 paragraph 4 of the European Convention on Human Rights;

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

4. unanimously, that the applicant's detention was not in violation of Article 5 paragraph 1(c) of the European Convention on Human Rights;

5. by 6 votes to 1, that, for the period from 28 August 2000 until the issuance of the procedural decision of 12 November 2001, the investigative judge whom the applicant was brought before was not a judge or other officer authorised by law for the purposes of Article 5 paragraph 3 of the European Convention on Human Rights, thus constituting a violation of that Article, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

6. by 6 votes to 1, that the length of the applicant's detention from 28 August 2000 until 7 February 2003 constitutes a violation of his right to be tried within a reasonable time or released pending trial as guaranteed by Article 5 paragraph 3 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

7. by 6 votes to 1, that the applicant was prevented from taking proceedings by which the lawfulness of his detention could be decided speedily by a court, thus violating the applicant's rights as guaranteed under Article 5 paragraph 4 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

8. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 5,000 KM (five thousand Convertible Marks) by way of compensation for non-pecuniary damage;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,000 KM (one thousand Convertible Marks) by way of compensation for legal costs and expenses;

10. unanimously, that simple interest at an annual rate of 10% (ten percent) will be payable on the sums awarded in conclusions 8 and 9 above from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

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11. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or its successor institution within three months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures on the steps taken by it to comply with the above orders.

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

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

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