



**DECISION ON ADMISSIBILITY AND MERITS**  
(delivered on 4 July 2003)

**Case no. CH/02/8655**

**Ferzija SAČAK and Fikreta SALIHAGIĆ**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 June 2003 with the following members present:

Ms. Michèle PICARD, President  
Mr. Miodrag PAJIĆ, Vice-President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
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 and 58 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. The application concerns a procedural decision by which the Doboj Municipality Assembly on 29 December 1998 allocated “city construction land”, over which the applicants had a right to use, to the Serb Orthodox Church District Doboj (Srpska pravoslavna crkvena opština) for the purpose of the construction of a Memorial Chapel. During the proceedings a temporary representative was appointed to the applicants, who are of Bosniak origin and were displaced as a consequence of the armed conflict. The applicants complain that they have not been informed about the proceedings before the issuance of the procedural decision and that they have never been delivered the procedural decision. The applicants allege that the allocation of the land to the Orthodox Church is illegal in several respects.

2. The application raises issues under Article 6 (1) (right to access to a court) and Article 13 (right to an effective remedy) of the European Convention on Human Rights (the “Convention”), and Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions). The application also raises issues under Article II(2)(b) of the Agreement of alleged or apparent discrimination in connection with the human rights guaranteed by the Convention.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

3. The application was submitted to the Chamber by the applicants’ lawyer, Mr. Zijad Mehmedagić, on 7 January 2002 and registered on the same day.

4. In the application, the applicants requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary action to prohibit disposal and any further construction on the disputed land in order to prevent irreparable harm. The First Panel, at its session of 6 February 2002, decided to issue an order for provisional measures ordering the respondent Party to stop further construction of the Memorial Chapel in Doboj on the cadastral lot no. 6826/2 *Srednje Polje*, plough field of class I, 403 square meters of space registered in PL. no. 4768 Cadaster Municipality Doboj / old cadastral lot no. 602/17, registered in the land register excerpt no. 2118, of the users Fikreta SALIHAGIĆ and Ferzija SAČAK. The order for provisional measures stated that it shall remain in force until the Chamber takes its final decision, unless it is withdrawn by the Chamber at an earlier stage.

5. On 6 February 2002, the Chamber transmitted the application to the respondent Party for its observations. On 6 March 2002, the respondent Party submitted its observations on the admissibility and merits of the application.

6. On 9 April 2002, the applicants’ lawyer submitted observations in reply to the respondent Party’s observations.

7. On 27 May 2002, the applicants’ lawyer submitted further observations in response to a letter of the Chamber of 15 May 2002.

8. On 16 September 2002, the respondent Party submitted further observations in response to a letter of the Chamber of 7 August 2002. The Chamber sent these observations to the applicants on 3 October 2002. On 4 November 2002 the applicants’ lawyer sent a letter regarding the respondent Party’s submission of 16 September 2002. On 15 November 2002 the Chamber transmitted the applicants’ letter to the respondent Party.

9. On 28 January 2003 the Chamber forwarded its letter of 15 May 2002 and the applicants’ letter of 27 May 2002 to the respondent Party. On 12 February 2003 the respondent Party in reply to these letters submitted additional observations. On 24 February 2003 the Chamber transmitted the respondent Party’s letter of 12 February 2003 to the applicants. On 13 March 2003 the applicants’ lawyer submitted further observations in response to respondent Party’s letter of 12 February 2003.

10. On 20 March 2003 the Chamber transmitted the applicants' letter of 13 March 2003 to the respondent Party.

11. The Chamber deliberated on the admissibility and merits of the application on 12 October and 8 November 2002 and on 7 May and 6 June 2003. On the latter date the Chamber adopted the present decision on admissibility and merits.

### III. STATEMENT OF THE FACTS

12. The real property in question in this case is situated in the Doboj Municipality. In the land registry entry no. 2118, Cadaster Municipality Doboj, the "right to use the land in question until the responsible authority issues a procedural decision on delivery of the plot in possession to the Municipality or another person" is registered in favour of Razija Ganibegović, married Mulalić (the applicants' mother), from Doboj with 1/1 (i.e. in its entirety). As to the cadastral records, the applicants are registered as possessors of the land in question in possession list no. 4768.

13. According to the respondent Party, the land in question was nationalised by the procedural decision of the Doboj Municipality National Committee - Department for Finances (Odjeljenje za finansije Narodnog odbora Opštine Doboj) - no. 2599/59 of 18 December 1959 and declared construction land by the National Republic of Bosnia and Herzegovina Executive Council ("Official Gazette NR BiH", no. 5/59) as it is located in the urban area (uži građevinski reon) of the Doboj Municipality.

14. On 31 March 1987 the applicants, who are two sisters, concluded a contract on donation with their parents. By that contract the applicants' parents transferred to the applicants, in equal parts, the right of use of the real estate registered in possession list no. 2128, marked as cadastral lot new no. 6826, named "Srednje Polje", plough field of class I, 4955 square meters of space, registered in Cadaster Municipality Doboj.

15. On 8 May 1989 the First Instance Court in Doboj issued an additional procedural decision on inheritance by which the applicants inherited, after the death of their father, the right to use the real estate registered in possession list no. 2128 and marked as cadastral lot new no. 6826 named "Srednje Polje", plough field of class I, 4955 square meters, all in Cadaster Municipality Doboj.

16. On 29 December 1998 the Doboj Municipality Assembly issued a procedural decision allocating city building land to the Serb Orthodox Church District Doboj (Srpska pravoslavna crkvena opština), for the purpose of the construction of a Memorial Chapel. The decision allocates, among others, also the site designated as k.č. no. 6826/2 "Srednje polje", 1<sup>st</sup> class tilled field, space of 403 m<sup>2</sup>, registered in PL. 4768 k.o. Doboj, old k.č. no. 602/17, registered in land registry entry 2118, 1/2 of the users SALIHAGIĆ /Hilme/ Fikreta nee MULALIĆ, and 1/2 SAČAK /Hilme/ Ferzija nee MULALIĆ. This piece of land is a part of the land to which the applicants inherited the right to use.

17. The same procedural decision determines the monetary compensation to be paid for the aforementioned site in the amount of 5,392 DEM, in the Dinar counter value. The Serb Orthodox Church District Doboj is required to pay this compensation to the users (the applicants) when the aforementioned procedural decision becomes valid.

18. The procedural decision further states that the Serb Orthodox Church District Doboj shall make a contract with JP "Doboinvest" Doboj by which the manner of construction of a residential-business facility will be regulated more specifically, in accordance with the Construction Land Development Program.

19. The procedural decision also states that the right to use the State-owned undeveloped building land will be registered at the First Instance Court in Doboj and the Regional Department Doboj of the Republic Administration for Geodetic and Property-Legal Affairs to the benefit of the Serb

Orthodox Church District Doboj, upon its request, as soon as evidence of the payment of compensation for the allocation of the building land is submitted.

20. As shown in the reasoning of the above stated procedural decision, the applicants did not participate in these proceedings. A temporary representative was appointed to them who, at the oral hearing which was held on 17 November 1998, stated that he did not object to the allocation of the building land in question for the purpose of the construction of the Memorial Chapel.

21. No appeal is allowed against the procedural decision, but an administrative dispute may be initiated by filing an action with the District Court in Doboj within a 30 day time limit from the receipt of the procedural decision. The temporary representative of the applicants did not initiate an administrative dispute.

22. On 24 October 2000 the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter: "CRPC") issued the decision no: 202-6071-1/2 confirming that on 1 April 1992 Ferzija Sačak was a bona fide co-possessor of 1/2 of the real properties defined as follows: k.č. no: 6826/1 from the Deed of Title no. 4768 K.O. Doboj-Doboj.

23. The applicant Ferzija Sačak has not requested the enforcement of the CRPC decision in writing.

24. The procedural decision of the Doboj Municipality Assembly of 29 December 1998 has never been delivered to the applicants or to their lawyer, while it remains unclear whether it has ever been delivered to the temporary representative (see paragraph 75 below).

25. On 17 December 2002 the Regional Department Doboj of the Republic Administration for Geodetic and Property-Legal Affairs organised an oral hearing on the initiative, i.e. request, of the Mayor of the Municipality Doboj for renewal of administrative procedure relating to the land in question that was seized and allocated to the Serb Orthodox Church District Doboj by the procedural decision of 29 December 1998.

26. The minutes of the oral hearing state that Salihagić Fikreta and Sačak Ferzija initiated proceedings before the Human Rights Chamber because they had not participated in the administrative proceedings in which the procedural decision on the seizure of the land was issued.

27. On 27 December 2002 the Department for Urban Development of the Municipality Doboj, upon request of the Serb Orthodox Church District Doboj of 24 December 2002, issued a procedural decision granting an urban approval to the Serb Orthodox Church District Doboj for construction of a religious object – the Memorial Chapel. The stated procedural decision does not cover cadastre lot 6826/2.

#### **IV. RELEVANT LEGAL PROVISIONS**

##### **A. The Law on General Administrative Procedure (Official Gazette RS, no. 13/02)**

28. On 26 March 2002 the RS Law on General Administrative Procedure entered into force which was published in the RS Official Gazette no. 13/02. Until that time Republika Srpska was applying the Law on General Administrative Procedure (OG SFRY no. 47/86).

29. Article 234 of the Law which corresponds to Article 249 of the SFRY Law on General Administrative Procedure reads as follows:

“ Proceedings completed by a procedural decision against which there are no ordinary remedies in the administrative proceedings (final in the administrative sense) shall be renewed:

...

9) if a person who was supposed to participate in the capacity of a party, was not given a possibility to participate in the proceedings;”

30. Article 235 of the Law reads as follows:

“ The renewal of administrative proceedings may be requested by a party, and the organ that issued the procedural decision finalising the proceedings may initiate the renewal of proceedings ex officio.”

31. Article 237 of the Law reads as follows:

“A party may request the renewal of proceedings within one month:

...

(5) in the case under Article 234, paragraphs 9, 10 and 11 – from the date of delivery of the procedural decision.

...

After expiry of 5 years after delivery of the procedural decision renewal of the proceedings cannot be requested, nor can it be initiated ex officio.”

32. Article 240 paragraph 1 and 2 of the Law which correspond to Article 255 of the SFRY Law on General Administrative Procedure reads as follows:

“The Party shall deliver or mail the proposal for renewal of the proceedings to the organ which was dealing with the case in the first instance or the organ which issued the procedural decision finalising the proceedings.

The proposal for renewal of the proceedings shall be decided by the organ which issued the procedural decision finalising the proceedings.”

33. Article 242 paragraph 2 of the Law reads as follows:

“The organ may, when possible in circumstances of the case and in the interest of speeding up the proceedings, as soon as it establishes existence of requirements for renewal proceed with those activities that are to be renewed without issuing a special conclusion allowing the renewal.”

34. Article 243 of the Law reads as follows:

“On the basis of the data obtained in the former and renewed proceedings, the organ shall issue a procedural decision on the legal matter that was the subject of proceedings, by which it may keep in force the former procedural decision that was the subject of renewal or it may replace it with a new one. In the second case, with regard to all circumstances of an individual case, the organ can annul or put out of force the previous decision.”

35. Article 254 of the Law reads as follows:

“By annulling the procedural decision and declaring it null and void, legal consequences that resulted from such procedural decision are annulled.

Putting out of force of the procedural decision does not annul legal consequences resulted from the procedural decision, but further implementation of legal consequences of such procedural decision is being disabled.

The body that finds out about the procedural decision that breached the law and a breach may be the reason for renewal of the proceedings, that is cancellation, annulment or

amendment of the procedural decision must, without delay, inform the organ competent for initiating the proceedings and issuing the procedural decision.”

36. As to the appointment of temporary representatives, Article 55 of the Law on General Administrative Procedure deleted (OG SFRY, no. 47/86), applied in the RS at the relevant time, read:

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

...

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

**B. The Law on Administrative Disputes (Official Gazette RS, no. 12/94)**

37. Article 22 of the Law reads as follows:

“An administrative dispute shall be initiated by filing an action.”

38. Article 23 paragraph 1 of the Law reads as follows:

“An action must be filed within 30 day time limit from the date of the delivery of a legal act to a party concerned.”

**C. The Law on Construction Land (Official Gazette SR BiH 34/86, 1/90, 29/90 and Official Gazette RS, no. 29/94, 23/98 and 5/99)**

39. Article 4 of the Law reads as follows:

“The right of ownership may not exist over city construction land.”

40. Article 5 of the Law reads as follows:

“The construction land may not be alienated from social property but rights provided for by the law may be acquired over it.”

41. Article 6 of the Law reads as follows:

“The Municipality shall manage and dispose with the city construction land in the manner and under conditions stipulated in the law and regulations issued on the basis of law.”

42. Article 21 of the Law reads as follows:

“The former owner of city construction land is entitled to the following rights:

- temporary right to use undeveloped city construction building land until its seizure (hereinafter: temporary right to use land);
- priority right to use undeveloped city construction land for the purpose of construction (hereinafter: priority right to construct upon land);
- right to use developed city construction land while a building still exists on it (hereinafter: permanent right to use land);

A person whose right of ownership was registered in the cadaster, *i.e.*, a person whose right of ownership was established by a procedural decision issued by an organ designated in Article 14, paragraph 2 of this Law, during a time when construction land was transferred into social ownership, is considered as a former owner of undeveloped city construction land which becomes socially-owned after this Law enters into force.

A person whose right of ownership was registered in the land registry, *i.e.*, a person established to be the owner during a time when construction land was transferred into social ownership, is considered as a former owner of undeveloped city construction land which became socially-owned before this Law entered into force.

The person to whom the former owner has transferred the right to use the construction land by the date of the transfer of construction land to social ownership, shall be considered a former owner of undeveloped city construction land based on the contract, the signatures of which are verified with the organ competent for verification of signatures, or if the contracted price was paid through a bank or post office, or if the acquirer paid taxes or contributions on that land.”

43. Article 22 of the Law reads as follows:

“The former owner or the holder of the temporary right to use land is entitled to use undeveloped city construction land in a manner which will maintain its permanent purpose until it is seized from his possession.

The holder of the temporary right to use land may construct a temporary structure to meet his needs on that land with approval of the responsible municipal administrative body.

The holder of the temporary right to use land may relinquish undeveloped urban building land to another person for temporary use, but only for agricultural activities.”

44. Article 24 of the Law reads as follows:

“ A former owner may transfer the temporary right to use the land to spouse, descendants, adopted children and their descendants, parents and adopting parents.

Spouse, descendants, adopted children and their descendants, parents and adopting parents may, by a legal arrangement, transfer the temporary right to use the land only to their descendants, adopted children and a spouse.

The temporary right to use the land shall be inherited by the legal heirs of the former owner, as well as by the legal heirs of the persons who the former owner transferred that right to by the legal arrangement.

The provisions of the former paragraphs shall also be applied to the former owners of the land that has become social property under the former regulations as well as to the persons under Article 21 paragraph 4 of this Law.”

45. Article 25 of the Law reads as follows:

“The Municipal Assembly enacts decisions on the seizure of undeveloped city construction land for the purposes of permanent use, that is, for the purposes of development and construction.

Decisions from the previous paragraph may also be enacted in case that the Municipal Assembly establishes the public interest for building temporary buildings in social ownership. In the proceedings for the seizure of land, a former owner or holder of a temporary right to use the land shall be heard.

Decisions on seizure shall not allow for an appeal, but they shall allow for a possibility of filing an administrative dispute.”

46. Article 44 of the Law as follows:

“The former owner of undeveloped city construction land, which was seized from his possession, is entitled to compensation.

The former owner of undeveloped city construction land or his or her legal successor obtains the right to compensation upon the decision on seizure becoming final and effective or upon

providing a statement from the former owner relinquishing the land in favour of the Municipality.

The compensation for seized land shall be paid by the Municipality in the area where the land is located.

The compensation shall be estimated and paid in accordance with the provisions of the Law on Expropriation — consolidated text (Official Gazette of SRBiH nos. 12/87, 38/89).”

47. Article 47 of the Law as follows:

“The Municipal Assembly allocates city construction land to legal persons for the purpose of building structures and to individuals for the purpose of building a residential building or a building of another type, to which they may assert a right of possession under the law.

A decision on the allocation of land for building purposes shall be enacted by the Municipal Assembly.”

48. Article 48 of the Law as follows:

“The city construction land shall be allocated for use for the purpose of construction on the basis of tender or by direct agreement, under conditions, in the way and in the procedure prescribed by this Law and provisions issued on the bases it.

The city construction land shall be allocated for construction by direct agreement in case of construction of: military facilities, facilities for purposes of social protection, education, culture and social care of children, and other facilities of special social interest; facilities for purposes of social-political communities, state organs and social-political organisations necessary for realisation of their tasks; facilities for purposes of organisations which perform tasks of special social interest established by law or decision of the Municipality Assembly; network and facilities of infrastructure; facilities for official purposes of foreign diplomatic missions and consulates and organisations and specialised agencies of the UN organisation; residential buildings constructed by joined funds or funds of self-governing communities of interest in the housing area; industrial or other production facility stipulated by the appropriate plan for transfer of certain users or which are intended for certain social user; residential buildings built by housing co-operatives.

The Municipality Assembly may prescribe by its decision that the city constructed land shall be allocated for use by direct agreement also in other cases of general interest or when that is required by the joined fundamental needs of citizens, organisations of associated labour or other social-legal persons in a certain area, and especially in the case of construction of apartments for market, construction of business premises for small businesses carrying out scarce activities, construction of family residential buildings constructed by housing co-operative, securing to give other appropriate real estate for exchange for expropriated real estate and construction of building for replacement of building destroyed by natural disasters.”

49. Article 52 of the Law as follows:

“The person to whom the city construction land is allocated for construction is obliged to pay the compensation for allocated land and the compensation for costs of regulation of that land.

The previous owner who obtained the priority right to use the land for construction on the city construction land is also obliged to pay the amount of compensation from previous paragraph, except the compensation for the land taken into possession.

The amount of compensation for city construction land shall be determined by the procedural decision on allocation of the land in question and the amount of compensation for costs of regulation of the city construction land shall be determined by the procedural decision on the urban approval.

The permit for construction may not be issued or the registration of the right to use the land for construction in the Cadastre of real-estates or the Land Books may not be performed for the person to whom the city construction land is allocated until he submits the evidence that he paid the compensation for the land and costs of regulation of land.”

## **D. Decisions of the High Representative on State-Owned Real Property**

### **1. Decision of 26 May 1999**

50. On 26 May 1999, the High Representative issued a Decision suspending the power of local authorities in the Federation and the Republika Srpska to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities.

51. The Decision of 26 May 1999 states, in pertinent part, as follows:

“Notwithstanding the provision of any other law, state property (including former socially-owned property, but excluding socially-owned apartments) may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used on April 6, 1992 for cultural or religious services, or if it was used by natural persons for residential purposes, business activities, or agriculture.

“Any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work.”

52. The Decision of 26 May 1999 entered into force immediately and remained in force until 31 December 1999. On 31 December 1999, the High Representative extended the validity of the Decision of 26 May 1999 until 30 June 2000.

### **2. Decision of 27 April 2000**

53. On 27 April 2000, the High Representative issued a Decision on state-owned real property (Official Gazette of Bosnia and Herzegovina — hereinafter “OG BiH” — no. 13/00; Official Gazette of the Federation of Bosnia and Herzegovina — hereinafter “OG FBiH” — no. 17/00; Official Gazette of the Republika Srpska — hereinafter “OG RS” — no. 12/00). The Decision of 27 April 2000 revoked and superseded the Decision of the High Representative of 26 May 1999 and the Decision of 31 December 1999, which extended the Decision of 26 May 1999.

54. The Decision of 27 April 2000 states, in pertinent part, as follows:

“Notwithstanding the provision of any other law, state-owned real property, including former socially-owned property, but excluding socially owned apartments, may not be disposed of, allotted, transferred, sold, or given for use or rent, by the authorities of either Entity or Bosnia and Herzegovina.

“Any decision referred to in the previous paragraph made by the authorities of the Entities after 6 April 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work. ...

“Any decision, agreement or transaction in violation of this Decision is null and void. The Office of the High Representative may, upon a clear showing by the competent authorities of an Entity or Bosnia and Herzegovina that a proposed transfer of state-owned real property is non-discriminatory and in the best interest of the public, grant a written exemption to this Decision. The burden of clearly showing that a proposed transfer of state-owned real property is non-discriminatory and in the best interests of the public rests with the competent authority requesting a written exemption to this Decision.”

55. The Decision of 27 April 2000 entered into force immediately and remained in force until 31 December 2000. On 20 December 2000, the High Representative extended the validity of the Decision of 27 April 2000 until 30 March 2001 (OG BiH no. 34/00; OG FBiH no. 56/00; OG RS no.

44/00). On 30 March 2001, the High Representative again extended the validity of the Decision of 27 April 2000 until 31 July 2002 (OG BiH no. 11/01; OG FBiH no. 15/01; OG RS no. 17/01).

56. On 31 July 2002, the High Representative issued another Decision further extending the Decision of 27 April 2000 until 31 March 2003 (OG BiH no. 24/02 of 29 August 2002; OG RS no. 49/02 of 13 August 2002). The Decision of 31 July 2002 adds the following statement:

“Further, by means of the adoption of harmonized legislation regulating the transfer and disposal of state-owned real property, including socially-owned property, by a date as early as possible prior to 31 March 2003, the authorities of Bosnia and Herzegovina and its entities are to assume full responsibility for ensuring the re-allocation of state-owned real property, including formerly socially-owned property, in a non-discriminatory manner and in the best interests of the citizens of Bosnia and Herzegovina.”

### **3. Decision of 31 March 2003**

57. On 31 March 2003, the High Representative issued a Decision extending the 31 July 2002 ban on the allocation of state-owned land in Bosnia and Herzegovina until 15 May 2003 (OG BiH no. 13/03 of 15 May 2003 and OG FBiH no. 23/03 of 2 June 2003).

## **V. ALLEGED VIOLATION OF HUMAN RIGHTS**

58. The applicants complain of violations of Articles 6 (right to a fair hearing), 13 (right to an effective remedy), 14 (prohibition of discrimination), 17 (prohibition of abuse of rights) of the Convention and Article 1 Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions protection of property).

## **VI. SUBMISSIONS OF THE PARTIES**

### **A. The respondent Party**

#### **1. With respect to the facts and the applicable domestic law**

59. The respondent Party disputes the facts as set forth in the application.

60. The respondent Party alleges that the land in question was nationalised by the procedural decision of the Doboj Municipality National Committee - Department for Finances (Odjeljenje za finansije Narodnog odbora Opštine Doboj) - no. 2599/59 of 18 December 1959 and declared building land by the National Republic of Bosnia and Herzegovina Executive Council (“Official Gazette NR BiH”, no. 5/59) as it is located in the urban area (užem građevinskom reonu) of the Doboj Municipality.

61. On this basis, the respondent Party states that the applicants are not the owners of the land in question but that they have the right of use until the competent authorities issue a procedural decision allocating the land to the Municipality or to another person. It states that the site in question is designated as k.č. no. 602/1, the tilled field “Srednje polje”, zk. ul. 2118 k.o. Doboj, covering 4955 m<sup>2</sup> registered as socially-owned property in its entirety 1/1 with the right of use in favor of Razija Ganibegović, married Mulalić, from Doboj (the applicants’ mother).

62. The respondent Party further states that the Doboj Municipality Assembly did not obtain written approval of the Office of the High Representative to the transfer of use of the city construction land in accordance with the High Representative’s decision of 27 April 2000, as the procedural decision on allocation was issued on 11 August 1998 and a supplement of the procedural decision on 29 December 1998, both prior to decision of the High Representative.

63. The respondent Party states that the legal ground for the allocation of the site in question is in accordance with Articles 47, 48 and 52 of the Law on Building Land (see paragraphs 47, 48, 49 above).

64. The respondent Party states that by the procedural decision of 29 December 1998 the site in question was allocated to the Serb Orthodox Church District Doboj (Srpska pravoslavna crkvena opština) for the purpose of the construction of a Memorial Chapel, and that the applicants were awarded monetary compensation in the amount of DEM 5,392 which the Serb Orthodox Church District Doboj is obliged to pay the applicants when the procedural decision becomes valid. The respondent Party states that the amount of the monetary compensation for the site in question has been paid and deposited and is waiting for the applicants to withdraw it.

## **2. With respect to the admissibility**

65. The respondent Party considers the application inadmissible on grounds of failure to exhaust domestic remedies as required by Article VIII (2)(a) of the Agreement. The respondent Party states that the applicants could have initiated an administrative dispute before the District Court in Doboj within 30 days of the date of the delivery of the procedural decision (as it is stated in the remedies section of the procedural decision of 29 December 1998) as provided in Article 25 of the Law on Construction Land. In this connection, the respondent Party alleges that in an identical case the District Court in Doboj issued a judgement of 4 March 2002 granting the complaint and the disputed decision of the respondent Doboj Assembly was rendered null and void. The respondent Party has submitted to the Chamber a copy of this decision. However, in its submissions of 16 September 2002 (see paragraph 75 below), the respondent Party states that the applicants are barred from initiating an administrative dispute, the time limit having expired.

66. The respondent Party further states that even before the initiation of an administrative dispute, pursuant to Articles 255 and 249 of the Law on General Administrative Procedure ("Official Gazette SFRY", no. 47/86, see paragraphs 29 and 32 above), the applicants could have filed a petition for the renewal of the proceedings which were completed by the procedural decision of 29 December 1998, arguing that they were not offered a chance to participate in the proceedings.

67. The respondent Party states that the applicant Ferzija Sačak has not submitted a claim for the enforcement of the CRPC decision of 24 April 2000.

## **3. With respect to the merits**

### **a. Article 6 and Article 13 of the Convention**

68. The respondent Party states that, before addressing the Chamber, the applicants have not used any remedy before the courts or the respondent Party's administrative bodies. Therefore, the applicants cannot argue that their right to a fair trial under Article 6 of the Convention has been violated.

69. Similarly, the respondent Party states that there has been no violation of Article 13 in conjunction with Article 6, considering that the applicants have not initiated an administrative dispute.

### **b. Article 1 Protocol No. 1 to the Convention.**

70. The respondent Party states that in the Land Registry the right to use the land is registered in its entirety in favour of Razija Ganibegović, married Mulalić, from Doboj (the applicants' mother). This registered right to use constitutes a property right which is protected within the scope of the provision of Article 1 Protocol No. 1 to the Convention only with limits. The respondent Party states that the site in question was allocated as building land to another person for the purpose of the construction of a facility. By the date of the issuance of the procedural decision the right of use in favour of the title holder registered in the Land Registry was extinguished.

71. The respondent Party further states that the Republika Srpska Government, at its session held on 13 August 1998, issued a decision giving its consent that the site in question may be allocated as undeveloped building land to the Serb Orthodox Church District for the construction of a Memorial Chapel for free (without any payment by the Orthodox Church). In accordance with Article 38 of the Law on Building Land the site was classified in the first category and as such may be allocated to legal and natural persons for the construction of residential or other buildings, as it was decided by the procedural decision of 29 December 1998. The monetary compensation for the site in question was determined in accordance with the provisions of the decision on the amount of compensation for the state-owned building land seized from its previous owner in 1998 ("Official Gazette of the Doboj Municipality", no. 2/98).

72. The respondent Party is of the opinion that its authorities applied the necessary laws in order to allow that the site in the closer urban area (uža zona grada) be used in accordance with the Regulatory Plan of the city of Doboj for the purposes for which it was intended. Therefore, there has been no violation of Article 1 Protocol no. 1 to the Convention.

#### **4. Respondent Party's position regarding the order for provisional measures**

73. The respondent Party alleges that the site on which the Memorial Chapel is being constructed has total space of 10,000 m<sup>2</sup> and the Doboj Municipality is the exclusive owner of the major part of this site. A part of the site, covering 402 m<sup>2</sup>, was seized from the applicants who had the right of use. It further states that the construction of the Memorial Chapel began in 2001 and that the construction work so far is at an advanced stage. The respondent Party considers that the aforementioned order affects the investor and contractor causing damage above the value of the site in question.

74. It proposes to the Chamber to withdraw its order for a provisional measure before the issuance of a decision on the admissibility and merits of the application as, with respect to the circumstances of the case and the value of the object, it would not be economically justified to suspend the constructing activities.

#### **5. The respondent Party's letter of 16 September 2002**

75. On 16 September 2002 upon the Chamber's request, the respondent Party submitted additional information. It concedes that the applicants were never delivered the procedural decision of the Doboj Municipality Assembly of 29 December 1998 because "the addresses of their place of residence were unknown", and because their temporary representative had participated in the proceedings. The respondent Party states that it is not aware who the above stated procedural decision has been delivered to, but it presumes that it was delivered to the temporary representative. It further states that the applicants cannot initiate an administrative dispute with a view to realising their rights and interests, but they are entitled to seek the renewal of the proceedings in accordance with Article 249(9) of the Law on General Administrative Proceedings in conjunction with Article 252(3) within a five year time limit.

#### **6. The respondent Party's letter of 12 February 2003**

76. On 12 February 2003 the respondent Party submitted additional observations in this case in which it stressed that on 27 December 2002 the urban approval for the Memorial Chapel has been amended so as to exclude the cadastral lot 6826/2. Therefore, the respondent Party considers the dispute solved. Furthermore, the respondent Party alleges that from the record of an oral hearing held before the Property-Legal Service on 17 December 2002 it is obvious that "the matter has been resolved", Salihagić Fikreta having accepted to receive compensation while the representative of Sačak Ferzija requested enormous compensation.

77. Since "the matter has been resolved" the respondent Party requests the Chamber to withdraw its order for provisional measures issued on 6 February 2002 because the possibility of irreparable harm does not exist. The respondent Party adds that the continued existence of the provisional measure, on the contrary, may cause inter-religious damage. Further, they state that in

the centre of Dobož two mosques are currently under construction and the other religious community (i.e. the Serb Orthodox Church) may consider the act of prohibition as discriminatory.

## **B. The applicants**

78. The applicants point out that the respondent Party disputes that they are owners of the land, although evidence to that effect was submitted to the respondent Party, i.e. the land registry excerpt no. 2118.

79. The applicants allege that the respondent Party should have requested a waiver of the ban on allocation of the site in question from the Office of the High Representative, and that without such a waiver the respondent Party neither could carry out a valid transfer of ownership nor lawfully apply Articles 47, 48, and 52 of the Law on Construction Land as a legal ground.

80. The applicants also state that the respondent Party has not presented any valid argument that an effective remedy does exist and is applicable in the specific situation of the applicants. They point out that they have in no way been informed by the respondent Party that they were deprived of the property of which they are "owners".

81. The applicants further state that they enjoyed the possession of the site which is their ownership until their expulsion from Dobož and they add that, according to the Regulatory Plan, the construction of a parking area is foreseen on that site and that the respondent Party allocated that site without legal amendment of the Regulatory Plan.

82. The applicants finally dispute the respondent Party's allegation that construction activities concerning the Memorial Chapel are at an advanced stage. According to them only the foundations have been laid several months ago.

83. The applicants state that they have not requested enforcement of the CRPC decision of 24 October 2000 in writing, but they requested it by orally addressing the competent officers in charge of the Ministry for Refugees and Displaced Persons, Department-Dobož, as they considered that the respondent Party's competent authorities should enforce the CRPC decision *ex officio* and reinstate them into possession of the real properties of which they were "the owners", in accordance with paragraph 3 of the CRPC decision.

84. In their letter of 13 March 2003 the applicants state that it is not true that "the matter has been resolved" as the respondent Party stated in its submission of 12 February 2003.

85. The applicants further allege that they have neither been compensated nor has any extra-judicial settlement been reached. They reiterate that they do not wish their land to be taken from them and that they request that the disputed land be returned to them.

86. They request that the respondent Party return the disputed land to its original condition, the condition of land suitable for agriculture such as it was before the illegal seizure. They further allege that the mentioned land has been covered with a layer of gravel and is not usable for agricultural purposes. This causes direct damage for which the applicants request compensation for moral and pecuniary damage as follows: 2,500 KM each applicant for compensation of moral damage (mental suffering) they underwent, which is in total 5,000 KM; 5,000 KM each for compensation of pecuniary damage for 5 years inability to farm the land, which is 10,000 KM in total.

87. The applicants also request that the respondent Party reinstates them after it has brought the land in the original condition and enable them registration in the Land Registry and Cadastre Record at the expense of the respondent Party, which was already requested at the oral hearing on 17 December 2002.

88. The applicants finally allege that the procedural decision of the Municipality Dobož of 27 December 2002 granting the urban approval for the construction of the Memorial Chapel is contrary to the provisions of the Law on Physical Planning, in particular to Articles 70, 71 and 76 because,

according to them, the construction is not in accordance with the Regulation Plan of the Municipality Dobož and does not concern “reconstruction” but new constructions.

## **VII. OPINION OF THE CHAMBER**

### **A. Whether “the matter has been resolved” within the meaning of Article VIII(3)(b) of the Agreement.**

89. The respondent Party on 12 February 2003 submitted additional observations in this case in which it stressed that on 27 December 2002 the urban approval for the Memorial Chapel has been amended so as to exclude the cadastral lot 6826/2, the lot to which the applicants have a right of use. Therefore, the respondent Party considers the dispute solved. Furthermore, the respondent Party alleges that from the record of an oral hearing held before the Property-Legal Service on 17 December 2002 it is obvious that “the matter has been resolved”, Salihagić Fikreta having accepted to receive compensation while the representative of Sačak Ferzija requested enormous compensation. The Chamber has understood this submission to be a motion to strike out the application under Article VIII (3)(b) of the Agreement.

90. Article VIII (3)(b) of the Agreement provides that “the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that ... (b) the matter has been resolved; ... provided that such a result is consistent with the objective of respect for human rights.”

91. However, the Chamber does not find that the matter is “resolved” within the meaning of Article VIII(3)(b). Firstly, the applicants consider that there still is an ongoing violation of their rights protected by the Agreement. The respondent Party has not convinced the Chamber that the alleged violations have been entirely brought to an end. Secondly, with regard to the alleged violations between December 1998 and December 2002, the respondent Party has not convinced the Chamber that it would be “consistent with the objective of respect for human rights” not to continue consideration.

92. Therefore, the Chamber will not strike out the application.

### **B. Admissibility**

93. Before considering the merits of this application, the Chamber must decide whether to accept it, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the [Chamber] within six months from such date on which the final decision was taken”.

#### **1. Exhaustion of domestic remedies**

94. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights (the “European Court”) has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The European Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting

Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

95. The respondent Party argues in its observation that, prior to submitting their application to the Chamber, the applicants should have initiated an administrative dispute before the District Court in Doboj within 30 day time limit of the date of the delivery of the procedural decision, as it is stated in the remedies section of the procedural decision of 29 December 1998 in accordance with Article 25 of the Law on Construction Land. The respondent Party alleges that in an identical case the District Court in Doboj issued a judgement on 4 March 2002 granting the complaint and voiding the decision of the Doboj Assembly. The respondent Party further states that pursuant to Articles 255 and 249 of the Law on General Administrative Procedure (“Official Gazette SFRJ”, no.47/86), the applicants could have filed a petition for the renewal of the proceedings which were completed by the procedural decision of 29 December 1998, if they have not been offered a chance to participate in the proceedings.

96. However, in its letter of 16 September 2002, the respondent Party argues that the applicants cannot initiate an administrative dispute. It still argues that they are entitled to seek the renewal of the proceedings in accordance with Article 249(9) of the Law on General Administrative Proceedings in conjunction with Article 252(3) within a five year time limit.

97. The Chamber notes that no appeal was allowed against the procedural decision of 29 December 2002 by which the Doboj Municipality Assembly allocated the site in question as city construction land to the Serb Orthodox Church District in Doboj. From the respondent Party’s letter received on 16 September 2002 it appears that the aforementioned procedural decision has never been delivered to the applicants, allegedly due to the fact that “the address of residence was unknown” and because the temporary representative participated in the course of the whole proceedings. From the letter it appears that the respondent Party is not aware who the mentioned procedural decision was delivered to, although they presume that that it was delivered to the temporary representative. As a consequence, it has remained unclear whether the procedural decision in question was ever delivered to the temporary representative appointed to the applicants or to anybody else. To the Chamber’s question whether the applicants may initiate an administrative dispute now, the respondent Party has replied that in light of the theory and the case law of the Supreme Court of the former SFR Yugoslavia, if a party has been informed about the administrative act and its content, the time limit to file an action does not start to run from the date of the information received but from the delivery of that act to the party in person. They further state that it is a practice, if after several years a party claims that it has not been delivered such an administrative act, and then files an action with a court, the court would reject the mentioned action as out of time. In its letter, the respondent Party states that, in the particular case, the applicants may not initiate an administrative dispute, but they may seek the renewal of administrative proceedings pursuant to Article 249(9) of the Law on General Administrative Procedure in conjunction with Article 252(3) within objective time limit of 5 years.

98. The Chamber notes that the applicants were incapable of filing an administrative dispute before the District Court in Doboj because they were unaware of the decision, and “the temporary representative”, if the decision was at all delivered to him, filed no such administrative dispute in their absence. Under these circumstances, the Chamber finds that the applicants were not required to initiate an administrative dispute for the purposes of Article VIII(2)(a) of the Agreement.

99. The Chamber also notes that the applicants have not submitted a proposal for renewed proceedings after they became aware of the procedural decision. However, considering that the renewal of proceedings is an extraordinary remedy, the Chamber finds that Article VIII(2)(a) of the Agreement does not require the applicants to exhaust this remedy. The Chamber therefore concludes that the admissibility requirement in Article VIII(2)(a) of the Agreement has been met.

## **2. Admissibility of the discrimination complaint**

100. Regarding the claim of the applicants that they have been discriminated against the Chamber notes that the applicants have not submitted any evidence to support their allegations. The Chamber

is therefore of the opinion that this part of the application is unsubstantiated and manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement.

### **3. Conclusion as to admissibility**

101. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the application is to be declared admissible except for the complaint of discrimination.

### **C. Merits**

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

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

103. Paragraph 1 of Article 6 of the Convention states as follows:

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

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

“It would be inconceivable, in the opinion of the Court, that Article 6 § 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings. ...

“[T]he Article embodies the ‘right to a court’, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing” (*id.* at page 18, paragraphs 35-36).

105. However, the right of access to a court enshrined in Article 6 is not absolute; it may be subject to certain limitations since the right “by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals” (Eur. Court HR, *Ashingdane v. United Kingdom*, Series A no. 93, page 24, paragraph 57). None the less, the limitations “must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired” (*id.*). “Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved” (*id.*).

106. In the present case the Chamber observes that the Doboj Municipality Assembly conducted the proceedings leading up to the seizure and allocation of the land *in absentia* of the applicants. In accordance with domestic law, the Doboj Municipality Assembly appointed a “temporary representative” to represent the interests of the applicants in those proceedings because their whereabouts were unknown. However, the respondent Party did not prove to the Chamber that the

Doboj Municipality Assembly made all necessary steps to find out the address of the applicants whereabouts and whether there really was urgency. As a result of the proceedings, the Doboj Municipality Assembly issued the procedural decisions of 29 December 1998, which seized and allocated the real property in question, despite the applicants' right to be heard in the proceedings for the seizure of the land. The temporary representative raised no objections in the proceedings. The respondent Party in its letter of 16 September 2002 stated that it is not aware whom the procedural decision was delivered to, although they presume that it was delivered to the temporary representative. Even if the Chamber was to accept the "presumption" that the procedural decision has been delivered to the temporary representative, he filed no administrative dispute against the procedural decision, which was clearly adverse to the applicants' interests. The respondent Party also stated that in the particular case the applicants may not initiate an administrative dispute but they may seek the renewal of administrative proceedings in accordance with domestic law.

107. The Chamber recognises that in certain circumstances it may be reasonable and necessary for the domestic authorities to conduct proceedings *in absentia* of an interested party. In such circumstances, Article 55(1) of the Law on General Administrative Procedure provides for the appointment of a temporary representative of an interested party whose place of residence is unknown (see paragraph 36 above). However, as the European Court has said in *Colozza v. Italy*, when the domestic law provides that proceedings may be conducted *in absentia* of an interested party, "that person should, once he becomes aware of the proceedings, be able to obtain, from a court which has heard him, a fresh determination of the merits of the charge" (Eur. Court HR, judgement of 12 February 1985, Series A no. 89, page 15, paragraph 29). In the present case, the applicants have been given no actual opportunity to participate in the proceedings which deprived them of their property rights, and the temporary representative appointed on their behalf by the Doboj Municipality Assembly may not, it appears, have adequately protected their interests.

108. The Chamber notes that Article 25 paragraph 3 of the Law in Construction Land prescribes that in proceedings for the seizure of land, a former owner or holder of a temporary right to use the land shall be heard. In light of the mentioned Article the Chamber notes that in a similar case of an administrative dispute against the procedural decision of 29 December 1998 (*Rudanović and Others*), the District Court in Doboj issued a judgement on 4 March 2002 accepting the complaint and annulling the part of the disputed act in which the undeveloped construction land was seized and the part by which compensation was awarded to the plaintiffs. In the reasoning of the mentioned judgement, the Court states that the respondent Doboj Municipality Assembly has not presented any evidence that the applicants were heard in the proceedings prior to the issuance of the disputed act, and that the applicants' complaint rightly indicates that failure. Pursuant to the provision of Article 25(3) of the Law on Constructed Land, in the proceedings for the seizure of construction land a former owner or a holder of a temporary right to use must be heard. The Court further states that, as there is no evidence that the plaintiffs were heard in the proceedings for the seizure of the land in question, or that they made any statements with respect to compensation for the land in question, the Court finds the disputed act unlawful in the part contested by the complaint. The Court further states that due to the failure to enable the plaintiffs to participate in the proceedings prior to the issuance of the disputed procedural decision, their property rights as well as their human rights guaranteed under the Convention have been violated.

109. The Chamber concludes that the applicants have been given no actual opportunity to participate in the proceedings which deprived them of their property rights, and the temporary representative appointed on their behalf by the Doboj Municipality Assembly may not, it appears, have adequately protected their interests. Also, as the District Court in Doboj explained in its judgement of 4 March 2002, there is no evidence that the plaintiffs were heard in the proceedings for the seizure of the land in question, or that they made any statements with respect to compensation for the land in question. In the case of *Rudanović & Others*, the District Court found that that the disputed act was unlawful in the part contested by the complaint (see para. 108 above). However, according to the respondent Party, the applicants before the Chamber cannot challenge the 1998 decision of the Doboj Municipality Assembly, because the deadline to start an administrative dispute has expired (although the decision was never delivered to them). In these circumstances, the Chamber cannot but conclude that the respondent Party has failed to provide the applicants with access to a court for the determination of their property rights. Therefore, the Chamber finds that the

respondent Party has violated the applicants' rights as guaranteed by paragraph 1 of Article 6 of the Convention.

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

110. Article 1 of Protocol No. 1 to the Convention states as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

“The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

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

### **a. Existence of a “possession”**

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

113. As the respondent Party stated in its observations, the applicants are not the owners of the land, but they have under Article 22 of the Law on Building Land, the right to use it up to the date when the competent organ issues the procedural decision on seizure of the land into possession of the municipality or some other person, for the purpose of construction.

114. On the land in question in the land-book entry-file number 2118, Dobož Cadastre Municipality, on sheet A, the right to use is registered in favour of Razija (nee Ganibegović) Mulalić (the late mother of the applicants) from Dobož with 1/1 to the time when the competent organ issues the procedural decision on handing over of the land into possession of the Municipality or some other person.

115. The Chamber notes that in accordance with the Law on Construction Land (see paragraphs 39-49 above), the applicants are considered to be the holders of a temporary right to use undeveloped city construction land until its seizure. As explained above, the applicants' property rights to this real property were established in the contract on gift of 1987 and the decisions on inheritance of 1989 by the Court of First Instance in Dobož (see paragraphs 14 and 15 above). Article 21 of the Law on Construction Land provides that the former owner is entitled to the temporary right to use undeveloped building land until its seizure. According to Article 22 of the Law the former owner or the holder of the temporary right to use land is entitled to use undeveloped urban building land in a manner which will maintain its permanent purpose until it is seized from his possession. According to Article 24 a former owner may transfer the temporary right to use the land only to his or her spouse, descendants, adopted children and their descendants, parents and

adopting parents. The same Article further states that the temporary right to use the land shall be inherited by the legal heirs of the former owner. According to Article 25 in the proceedings for the seizure of land, a former owner or holder of a temporary right to use the land shall be heard.

116. The Chamber observes that the character of the temporary right to use undeveloped city construction land until its seizure, as defined in the domestic law, indicates that it is a valuable, transferable property right. Under domestic law, former owners have considerable property rights in nationalised undeveloped building land previously owned by them, and in fact, the quality of these property rights is closely related to ownership rights. Therefore, the Chamber finds that the temporary right to use undeveloped urban building land until its seizure is an enforceable right with an economic value which is a “possession” within the meaning of Article 1 of Protocol No. 1.

**b. Principle of lawfulness**

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

“The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possession should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only ‘subject to the conditions provided for by law’ and the second paragraph recognises that the States have the right to control the use of property by enforcing ‘laws’. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and entails a duty on the part of the State or other public authority to comply with judicial orders or decisions against it. It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary” (Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 97, paragraph 58).

118. In *Iatridis v. Greece*, the applicant leased an open-air cinema and acted as its owner. Several years later, the Government informed the applicant that his cinema had been built on State property. Three additional years later, the Government assigned the cinema to a certain town council and issued an administrative eviction order that deprived the applicant of his right to use and possess the cinema. For nearly ten years, the applicant challenged the assignment and eviction order through various judicial and administrative procedures. Although the eviction order was eventually quashed, the assignment was not revoked, so the applicant was not able to regain possession of his cinema. Whilst considering the applicant’s complaint under Article 1 of Protocol No. 1, the European Court observed that the issue of ownership of the cinema remained disputed. None the less, the European Court found that the applicant had operated the cinema under a valid lease for many years, and as a result, he had built up a clientele that constituted a protected ‘possession’ (*id.* at paragraph 54). With respect to the legality of the Government’s actions, the European Court noted that at the time, the applicant’s eviction had had a legal basis in domestic law. However, later the competent court quashed that legal eviction order. “From that moment on, the applicant’s eviction thus ceased to have any legal basis and [the town council] became an unlawful occupier and should have returned the cinema to the applicant” (*id.* at paragraph 61). Consequently, the European Court concluded that “the interference in question is manifestly in breach of Greek law and accordingly incompatible with the applicant’s right to the peaceful enjoyment of his possessions” (*id.* at paragraph 62).

119. Similarly, in the present case, there was arguably a valid basis in domestic law for the procedural decisions issued by the Dobož Municipality Assembly on 29 December 1998. However, in accordance with Article 25 paragraph 3 of the Law on Construction Land, it is prescribed that in the proceedings for the seizure of building land the former owner or holder of a temporary right to use be

heard. In this case, there was no actual opportunity for the applicants to exercise such right since the Doboj Municipality Assembly seized and allocated the land in question *in absentia* of the applicants, although the Doboj Municipality Assembly did invite a temporary representative who was unknown to the applicants to protect their rights in those proceedings. The Chamber notes that the manner in which those proceedings were conducted calls into question the propriety of the procedural decisions of 29 December 1998 under the Law on Construction Land and the Law on General Administrative Procedures.

120. Furthermore, the Republic Administration for Geodetic and Property-Legal Affairs of the Regional Department Doboj conducted the oral hearing on 17 December 2002 in this case on the initiative i.e. request of the Mayor of the Municipality Doboj for renewal of administrative procedure relating the land in question seized and allocated to the Serb Orthodox Church District in Doboj by the procedural decision of the Doboj Municipality Assembly of 29 December 1998. The Chamber notes that after the hearing the competent organ of the respondent Party has not issued any procedural decision in accordance with Article 243 of the Law on General Administrative Procedure in order to return the plot concerned into the applicants' possession in the condition as it was before issuing the procedural decision of 29 December 1998. The respondent Party only issued a procedural decision on 27 December 2002 granting an urban approval to the Serb Orthodox Church District in Doboj which no longer includes the land in question.

121. Since the respondent Party has failed to satisfy the principle of lawfulness contained within Article 1 of Protocol No. 1, it is unnecessary for the Chamber to consider further the remaining requirements of this Article.

### **c. Conclusion as to Article 1 of Protocol No. 1 to the Convention**

122. The Chamber concludes that the applicants' temporary right to use the land constitutes a protected possession, within the meaning of Article 1 of Protocol No. 1. In issuing the procedural decision of 29 December 1998, which seized and allocated the land in question to third parties, the respondent Party failed to fully comply with domestic law. The respondent Party also failed to comply with domestic law after the procedural decision of 27 December 2002 excluding the land in question from the site of the Memorial Chapel. Accordingly, the Chamber decides that the respondent Party has violated the applicants' right as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### **3. Article 13 of the Convention**

123. Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

124. The applicants allege violation of their rights as guaranteed by these provisions.

125. The Chamber, considering that it has found violations of the applicants' rights projected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, does not consider it necessary to examine the case under Article 13 of the Convention.

### **4. Conclusion as to merits**

126. In summary, the Chamber finds that the respondent Party has violated the human rights of the applicants protected by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

## VIII. REMEDIES

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

128. The applicants originally requested that the Chamber order the respondent Party not to dispose of the land they claim and to stop any further construction on it. Since the Municipality Doboj in the procedural decision of 27 December 2002, granting an urban construction approval to the Serb Orthodox Church Municipality Doboj, excluded the land in question from that approval, the Chamber finds it no longer justified to order any remedy in this respect.

129. The applicants now request the respondent Party to return the disputed land into the original condition, the condition of land suitable for agriculture such as it was before the illegal dispossessing. They further request that the respondent Party reinstates them after it has brought the land in the original condition and enable them registration in the Land Registry and Cadastre Record at the expense of the respondent Party. The applicants request compensation for moral and pecuniary damage as follows: 2,500 KM each applicant for compensation of moral damage-mental suffering they have undergone, which is in total 5,000 KM; 5,000 KM each for compensation of pecuniary damage for 5 years inability to farm the land, which is 10,000 KM in total. The applicants' total request for compensation thus amounts to 15,000 KM. The applicants' representative submits expenses according to the tariff of the Advocates Chamber in total 1,856.20 KM.

130. The Chamber notes that it has found a violation of the applicants' human rights protected by Article 6 paragraph 1 of the Convention and Article 1 Protocol No. 1 to the Convention. The Chamber considers it appropriate to order the respondent Party to take all necessary action to ensure, as soon as practicable and at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, that the Doboj Municipality issue the new procedural decision, in accordance with Article 243 of the Law on General Administrative Procedure, by which it would replace the procedural decision of 29 December 1998 and return the plot concerned into the applicants' possession in the condition as it was before issuing the procedural decision of 29 December 1998.

131. Furthermore, the Chamber considers it appropriate to order the respondent Party to pay to the applicants, on an equitable basis, the lump sum amount of overall 5,000 KM as compensation for both loss of the use and non-pecuniary damages suffered by them as a result of the violations of their human rights. The lump sum amount ordered in this paragraph shall be paid to the applicants within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

132. The Chamber considers it appropriate to order the respondent Party to pay to the applicants' lawyer expenses in the amount of 1,856.20 KM. The respondent Party has not objected to these expenses as calculated by the applicants' lawyer.

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

## IX. CONCLUSIONS

134. For the above reasons, the Chamber decides:

1. unanimously, that the application is admissible against the Republika Srpska under Articles 6 and 13 of the European Convention on Human Rights and Article 1 of Protocol No. 1 thereto;

2. unanimously, that the application is inadmissible against the Republika Srpska insofar as the applicants complain of discrimination under Article II(2)(b) of the Human Rights Agreement;

3. unanimously, that the Republika Srpska has violated the right of the applicants to a court as guaranteed by paragraph 1 of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that, with respect to the real property seized and allocated by the Doboj Municipality Assembly in the procedural decisions of 29 December 1998, the Republika Srpska has violated the right of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it is unnecessary for the Chamber to separately examine the case under Article 13 of the Convention;

6. unanimously, to order the Republika Srpska to take all necessary action to ensure, as soon as practicable and at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, that the Doboj Municipality issue a new procedural decision, in accordance with Article 243 of the Law on General Administrative Procedure, by which it would replace the procedural decision of 29 December 1998 and return the plot concerned into the applicants' possession in the condition as it was before issuing the procedural decision of 29 December 1998;

7. unanimously, to order the Republika Srpska to pay to the applicants 5,000 KM (*five thousand Convertible Marks*), by way of compensation for both loss of use and non-pecuniary damages, within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. unanimously, to order the Republika Srpska to pay the applicants' lawyer expenses in the amount of 1,856.20 KM (*one thousand eight hundred and fifty-six Convertible Marks and twenty Fenings*), within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

9. unanimously, to order the Republika Srpska to pay simple interest at an annual rate of 10% (ten per cent) on the sums specified in conclusions no. 7 and 8 above or any unpaid portion thereof after the expiry of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure until the date of settlement in full; and

10. unanimously, to order the Republika Srpska to report to the Chamber on the steps taken by it to comply with these orders within two months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel