DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 October 2003)

Case no. CH/02/9601

G.K.

against

**BOSNIA AND HERZEGOVINA,
THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 2 September 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the question whether the applicant is obliged to do military service in the Army of the Federation of Bosnia and Herzegovina.

2. The applicant and his family were detained in a concentration camp in Kula near Sarajevo in the Republika Srpska for an unspecified time during the armed conflict. From January 1995 to March 1996, he was allegedly forced to join the military forces of the Republika Srpska. During that time he was not allowed to carry weapons, but under the supervision of armed soldiers, he was forced to do labour, *e.g.* carrying heavy items, carrying wood to the front lines, or removing construction materials from destroyed houses. Since the end of the war, the applicant has been involved in voluntary work with various Non-Governmental Organisations ("NGOs"). As a consequence of his experiences during the war, the applicant feels that as a matter of conscience he cannot accept to perform military service at present and be obliged to use weapons. He alleges that his right to be recognised as a conscientious objector is being violated. However, he never applied to the competent authority for conscientious objector status. He further claims that his engagement with the forces of the Army of the Republika Srpska and his voluntary work should be taken into account as equivalent to military service so that he is not obliged to perform any further service, whether military or alternative/civilian service.

3. The case mainly raises issues of discrimination in relation to Article 4 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 20 March 2002.

5. On 19 April 2002, the case was transmitted to the Federation of Bosnia and Herzegovina ("the Federation") under Articles 4, 6, 9 and 13 of the Convention. The written observations of the Federation were received on 20 May 2002 and sent to the applicant for his comments. On 26 June 2002, the applicant's observations in reply to the observations of the Federation were received.

6. On 16 July 2002, the case was re-transmitted to the Federation under Article II(2)(b) of the Agreement in conjunction with Articles 4, 8 and 13 of the Convention and Article 26 of the International Covenant of Civil and Political Rights. The Federation was asked whether persons who performed military service in the Army of the Republika Srpska could be called upon to perform military service in the Army of the Federation and to clarify whether and how the Commission for Civilian Service functioned.

7. Additional written observations from the Federation were received on 15 September 2002 and sent to the applicant for his comments. The applicant replied on 18 and 27 September 2002.

8. On 16 July 2002, the case was also transmitted to Bosnia and Herzegovina under Articles 8 and 13 of the Convention and under Article II(2)(b) of the Agreement in conjunction with the aforementioned Articles of the Convention, Article 4 of the Convention and Article 26 of the International Covenant of Civil and Political Rights. With regard to the applicant's allegation that he will be called upon to perform military service in the Army of the Federation although he has already performed military service in the Army of the Republika Srpska, the Chamber reminded Bosnia and Herzegovina of its obligations under Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina not to "discriminate against returning refugees and displaced persons with respect to conscription into military service" and the obligation to "give positive consideration to requests for exemption from military and other obligatory services based on individual circumstances, so as to enable returnees to rebuild their lives" (Article II(2) of Annex 7). No written observations of Bosnia and Herzegovina were received.

9. On 17 September 2002 and on 27 September 2002, the applicant requested the Chamber officially to inform the Federal Ministry of Defence, Sarajevo Administration for Defence, Novi Grad

Defence Department (hereinafter "the Novi Grad Defence Department") that proceedings are pending before the Chamber and to order the Federation, as a provisional measure, not to draft the applicant for military service until a final decision of the Chamber is issued. On 8 October 2002, the Chamber decided to reject the request for provisional measures. Instead, it issued an official letter to the applicant that a case concerning his military service is pending before the Chamber.

10. Additional information from the Federation of Bosnia and Herzegovina was received on 16 September 2002, 26 November 2002, 25 and 31 March 2003 and 7 May 2003. Additional information from the applicant was received on 18 and 27 September 2002, 12 December 2002, 19 February 2003, 17 April 2003 and 25 August 2003.

11. The Chamber deliberated on the admissibility and merits of the case on 9 April, 2 July and 7 October 2002, 8 May, 1 and 3 July and 2 September 2003. On the latter date the Chamber adopted the present decision on admissibility and merits.

III. FACTS

12. The applicant was born on 12 March 1977. Before the armed conflict in Bosnia and Herzegovina broke out in May 1992, the applicant and his family lived in the part of Dobrinja that was under the control of the armed forces of the Bosnian Serbs during the war. From there he and his family were taken to the Kula concentration camp located in the Republika Srpska near Sarajevo, where they were held as prisoners for a period of time during the armed conflict. The applicant and his family were eventually allowed to leave the Kula concentration camp and were transferred to Grbavica in Sarajevo, which was then under the control of the armed forces of the Bosnian Serbs and which in 1996 was reintegrated into the Federation of Bosnia and Herzegovina.

13. The applicant claims that all throughout the time period from 1992 to 1996 he was subject to discrimination on ethnic grounds. From January 1995 to March 1996, he was allegedly forced to join the military forces of the Republika Srpska. During that time he was not allowed to carry weapons, but under the supervision of armed soldiers he was forced to do labour, *e.g.* carrying heavy items, carrying wood to the front lines, or removing construction materials from destroyed houses. As a consequence of these experiences, the applicant feels that as a matter of conscience he cannot accept to perform military service at present and be obliged to use weapons. He therefore wants to be recognised as a conscientious objector.

14. In the time after the end of the war, the applicant was involved in activities with several NGOs, including "Healing Hearts", "Schüler helfen leben", "Amici dei Bambini", "Centar za Mlade Suncokret", "Firefly Youth Project" and the "Pavarotti Music Center". In particular, he organised percussion workshops for traumatised children and disabled persons.

15. On 23 July 1996, the applicant was registered in the military records of the Federation of Bosnia and Herzegovina. In accordance with Article 84 paragraph 1 of the Federation Law on Defence, a 90-day time-limit started to run for him to submit a request to the Commission for Civilian Service to perform civilian service. It appears that to date the applicant has not applied to the Commission for Civilian Service.

16. On 8 January 2001, the applicant submitted a request to the Novi Grad Defence Department to have the time that he served working for the military authorities in the Republika Srpska (from January 1995 to March 1996) and his volunteer work for various NGOs in the past recognised to account for his duty to perform military service. Together with this request the applicant allegedly submitted a copy of the official summons of the Military Department of Defence of the Republika Srpska issued in September 1995. In his request to the Novi Grad Defence Department of 8 January 2001, the applicant stated that he was subjected to discrimination. In particular he claimed that as a result of the war, he "twice fulfilled the obligation of recruits to register in the military register." In 1995 he was registered in the military records of the Republika Srpska. The second invitation to register in the military records in 1996, this time in the military records of the Federation of Bosnia and Herzegovina, shows "discrimination in relation to me and to those who were in the same position as I…", referring to other young men of ethnic minorities who were forced to perform compulsory

labour in Grbavica. He alleges further that the service he was forced to perform was intentionally not registered as a military obligation, and that therefore he was not entitled to have his service certified after the end of the war, while "nationally fit" soldiers, drawn from the Grbavica area, were entitled to obtain a certificate stating that they had fulfilled their military obligation.

17. On 23 February 2001, the Novi Grad Defence Department declared itself incompetent to deal with the question. Instead, it referred the applicant to the authorities of the Republika Srpska. It stated that "proving to have served in the Republika Srpska Army does not fall within the jurisdiction of this body". The applicant appealed against the decision. However, it appears that his appeal was never transmitted to any authority competent to deal with it.

18. In 2002 and 2003 the applicant attended several hearings before the Novi Grad Defence Department at which the issue of whether he had to perform military/civilian service was discussed. It appears that during one of these hearings he was offered the possibility to apply to perform civilian service, but he has not done so to date.

IV. RELEVANT LEGAL PROVISIONS

A. Annex 7 to the General Framework Agreement on Peace in Bosnia and Herzegovina

19. Annex 7 contains the Agreement for Refugees and Displaced Persons. Article II contains regulations for the creation of suitable conditions for return. It reads in relevant parts as follows:

> "The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan.
>
> The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives."

B. Law on Defence of the Republic of Bosnia and Herzegovina

20. The Law on Defence of the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina nos. 11/92, 17/93, 1/94, 13/94 and 4/95) regulated the obligation to perform military service for the time (January 1995 to March 1996) during which the applicant allegedly served in the Republika Srpska armed forces.

21. Article 71 reads as follows:

> "Persons whose military service was terminated based on the provisions of the Law on Military Service (Official Gazette of SFRY nos. 64/85, 26/89 and 30/91) and that, under provisions of that Law, should be sent to complete their term of service, shall not be sent to complete their term if less than 90 days remain until the expiry of their military service. Such persons are transferred to the military reserve and are considered to have regulated their military service."

22. Article 72 reads as follows.

> "Persons subject to military conscription and recruits who voluntarily join units, institutions and the headquarters of the armed forces or who are being mobilised by the armed forces, are entitled to hold the status as a soldier serving military service.

Persons under Article 71 of this Decree shall be recognised [*as having served military service*] and the time spent in these units, institutions and headquarters of armed forces of the Republic shall be calculated as time that accounts for the completion of military service, according to the conditions mentioned under paragraph 1 of this Article.

The time period which shall be calculated to account for the military service for persons mentioned under paragraphs 1 and 2 of this Article starts to run on the date of joining the unit, institution or headquarters of the armed forces.

Units, institutions and headquarters of armed forces are obliged to issue a certificate, *ex officio*, within 15 days from the date of entering into force of this Decree, to all persons subject to military conscription - recruits and persons serving in the reserve forces. It must state the date of joining the armed forces of the Republic and it must contain whether the military recruit joined voluntarily or was mobilised by the armed forces, as well as the name of the formation in which he served.

Persons subject to military conscription - recruits and persons serving in reserve forces - engaged in compulsory work order by units, institutions and headquarters of the armed forces of the Republic shall hold a status equal to that of soldiers mentioned by paragraph 1 of this Article.

The Municipal Organs of the Administration for Defence Affairs, whilst registering the persons subject to military conscription on the basis of a certificate issued according to paragraph 4 of this Article, shall regulate all questions which follow from the obligations concerning persons serving military service and persons serving in the reserve forces under paragraph 4 of this Article."

C. Law on Defence of the Federation of Bosnia and Herzegovina

23. The Law on Defence of the Federation of Bosnia and Herzegovina is published in the Official Gazette of the Federation of Bosnia and Herzegovina no. 15/96, and it regulates the obligation to perform military service or civilian service in the Federation of Bosnia and Herzegovina. It does not contain any explicit provision regarding whether somebody who served in the armed forces on either side during the war can be called upon to perform military service.

24. Article 65 reads as follows:

"All citizens are subject to a military obligation during war and peace under the conditions prescribed by this Law.

The fulfilment of military obligations is the responsibility of the bodies in the Federation, cantons and municipalities, business enterprises and other legal entities.

Within its rights and responsibilities, the Ministry of Defence organises and ensures compliance with the military obligations on the territory of the Federation, co-ordinates the function with the carrying out of other rights and responsibilities in the sphere of defence and, in connection with this, undertakes necessary measures and co-operates with the authorised military bodies.

The organisational department of the Ministry of Defence in the municipalities keeps the military record of the persons subject to conscription, reserve officers, material resources, livestock reserves and appropriate equipment, and performs other functions pertaining to record-keeping prescribed by this Law."

25. Article 72 reads as follows:

"The obligation to perform military service is fulfilled in the Army of the Federation of Bosnia and Herzegovina, whereas the obligation to serve in the reserve corps of the armed forces is fulfilled in the Army of the Federation and the Police.

Those persons who, for reasons of conscientious objection or religious or moral principles, are not prepared to participate in the performance of military duties in the armed forces, perform humanitarian or other tasks of general usefulness in the armed forces of the Federation or other legal entities."

26. Article 81 reads as follows:

"Conscientious objection is permitted to persons under military obligation who are not prepared to participate in performing military duties in the Army of the Federation for religious or moral principles (hereinafter: "persons with an obligation for civilian service"). Those persons are obliged to perform other duties as prescribed by this Law.

During this service a person with the obligation to perform civilian service has, as a general rule, the same obligations as a soldier serving his military service, except that he does not carry arms or exercise any kind of force against other people.

The duties performed by persons with an obligation for civilian service will be determined by the Government of the Federation."

27. Article 82 reads as follows:

"Civilian service is, as a general rule, performed in the Army of the Federation without the carrying or use of weapons."

28. Article 83 reads as follows:

"Civilian service can also be performed in legal entities that are based on the territory of the Federation, as determined by the Ministry of Defence."

29. Article 84 reads as follows.

"A recruit who believes that he fulfilled all the conditions for civilian service can, upon his registration in the military records, submit a request to the Commission for Civilian Service.

The request in paragraph 1 of this Article must be submitted no later than 90 days after the day of registration in the military records."

30. Article 101 reads as follows:

"The following persons are relieved from the obligation to perform military service:
- A person evaluated as being unfit for military service,
- A person who acquires his citizenship by naturalisation or on the basis of international agreements, if he has served military service in the country of which he was citizen, or if he is above 27 years of age,
- A person who has attained the status of a professional serviceman in accordance with the regulations on service in the Army of the Federation,
- A person who has graduated from a school of international affairs,
- A person who has graduated from the faculty of defence or who has completed his career in the Army of the Federation for a period and in accordance with a program prescribed by the Minister of Defence."

V. COMPLAINTS

31. The applicant alleges a violation of his right to freedom of thought, conscience and religion as protected under Article 9 of the Convention because his right to perform civilian service instead of military service has not been recognised. The applicant alleges that only in September 2000 he learnt from the newspaper that he should have applied to the Commission for Civilian Service although the time limit of 90 days for his application had started to run when he was registered in the military records on 23 July 1996 (see paragraph 29 above). He further submits that the Commission for Civilian Service exists only on paper and does not function in practise.

32. He further alleges a violation of Article 6 of the Convention because the procedure established in the law of the Federation of Bosnia and Herzegovina to recognise someone to be a conscientious objector, and in particular the Commission for Civilian Service, were not operational in practise at the relevant time when, in accordance with the law, the applicant should have applied to be recognised as a conscientious objector. It appears that the applicant alleges in substance a violation of Article 13 in conjunction with Article 9 of the Convention, arguing that there is no effective remedy available to him to be recognised as a conscientious objector and be allowed to perform civilian service instead of military service.

33. The applicant also alleges a violation of his right under Article 4 of the Convention with regard to the fact that from January 1995 to March 1996 he was forced to work for the armed forces in the Republica Srpska while being supervised by armed soldiers. In particular, he claims to have been forced to do physical work such as "cleaning, cutting and carrying wood to the front line, removing wooden furniture from destroyed houses (for heating), carrying heavy items, removing construction materials (bricks, *etc.*) from destroyed houses." The applicant further submits that the distinction between work obligations, which were enforced in most areas of Bosnia and Herzegovina, and mobilisation into the armed forces was often blurred. He claims that persons from ethnic minorities were often forced to perform work under very dangerous conditions, such as digging trenches close to the front lines, thereby risking injury or even death.

34. In addition, the Chamber finds that there is an apparent issue of discrimination. If compulsory work performed during the war in the Republika Srpska and compulsory work performed during the war in the Federation of Bosnia and Herzegovina are recognised differently when assessing whether someone must perform military service in the Army of the Federation of Bosnia and Herzegovina in the future, then an issue might arise as to whether such treatment is discriminatory.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

35. In its written observations on admissibility and merits of 20 May 2002 and in its additional observations of 31 March 2003, the Federation submits that the applicant has never performed any military service for the Army of the Republika Srpska, but that he worked under a compulsory work order. It supports this claim by submitting a letter of the Republika Srpska Ministry of Defence. In this letter the Republika Srpska Ministry of Defence states that the applicant was not registered in the military records of the Republika Srpska Army. It concludes that he did not serve military service in the Republika Srpska. It further states that the applicant's allegation that he cannot prove his military engagement in the Republika Srpska is ill-founded because the Republika Srpska Ministry of Defence is obliged to issue a certificate on completion of military service.

36. The Federation further submits that on 10 March 2003, at a hearing before Novi Grad Defence Department, the applicant was informed that he could apply to perform civilian service in the Federation of Bosnia and Herzegovina and that in order to do so he must submit an appropriate request to the Commission for Civilian Service within the Federal Ministry of Justice.

37. In its observations of 15 September 2002, the Federation submits that the Commission on Civilian Service started to function on 1 October 2001. Until September 2002 it had allegedly received 17 requests and issued 16 decisions, recognising in eleven cases the right to perform

civilian service. The Federation of Bosnia and Herzegovina states further that it could not answer the question whether a person who performed military service in the Army of Republika Srpska could be summoned again to perform military service in the Army of the Federation of Bosnia and Herzegovina, as it had failed to obtain the relevant information from the Ministry of Defence.

38. On 7 April 2003, the Chamber, taking into consideration that it appears that the applicant did not perform regular military service with the Army of the Republika Srpska but was under a compulsory work obligation, asked the Federation of Bosnia and Herzegovina to clarify whether persons, who during and immediately after the war were under a compulsory work order in the Federation of Bosnia and Herzegovina, are called upon to perform military service again in the Army of the Federation of Bosnia and Herzegovina and whether time spent working under a compulsory work order is taken into account when determining the length of military service. According to the reply, received on 7 May 2003, compulsory work performed during the war and immediately after the war, no matter whether performed in the Republika Srpska or in the Federation of Bosnia and Herzegovina, is not taken into account when determining whether and for how long military service has to be performed, regardless of whether the compulsory work units set up by the municipalities performed special activities and tasks for the needs of the military forces or did any other kind of work. However, the Federation also points out that Article 72 of the Law on Defence of the Republic of Bosnia and Herzegovina, applicable at the time, provides that compulsory work in units, institutions and headquarters of the armed forces of the Republic can give the person who performs it a status equivalent to that of a soldier with the same rights and benefits in respect to the question whether this service is recognised to account for the duty to perform military service.

39. On 25 August 2003, the Federation submitted additional information in reply to the question whether persons who were mobilised during the course of the 1992-1995 armed conflict as soldiers in the military units of the Army of the Republic of Bosnia and Herzegovina or the Croatian Defence Council ("HVO") were being invited to perform their national service in the Army of the Federation (provided they were of the drafting age). The respondent Party cites Article 72 of the Law on Defence of the Republic of Bosnia and Herzegovina (see paragraph 25 above) and states that "those persons – recruits were not invited to serve if they were engaged in the units of the Army of the Republic of Bosnia and Herzegovina or the HVO for the period of six months (which was the duration of military service at the time)." Only if they had been engaged in units for less than six months are such persons/recruits called again to finish their six-month duty.

B. Bosnia and Herzegovina

40. Although on 16 July 2002 the case was transmitted to Bosnia and Herzegovina, it did not make any submissions.

C. The Republika Srpska

41. The case has not been transmitted to the Republika Srpska.

D. The applicant

42. The applicant maintains his complaints.

VII. OPINION OF THE CHAMBER

A. Admissibility

43. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: "(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken and ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Complaint under Article 4 of the Convention about forced labour from January 1995 to March 1996 in the Republika Srpska

44. With regard to the applicant's complaint under Article 4 of the Convention that from January 1995 to March 1996 he was forced to work for the armed forces in the Republica Srpska while being supervised by armed soldiers, the Chamber notes that it is incompetent *ratione temporis* to examine violations that occurred before the entry into force of the Agreement on 14 December 1995. Therefore this complaint is in part inadmissible *ratione temporis.*

45. With regard to the alleged violation that occurred in the time period from 14 December 1995 to March 1996, the Chamber notes that this complaint was raised more than six months after the treatment complained of ended. On the assumption that no effective remedy was available, the six month time period set out in Article VIII(2)(a) of the Agreement would start to run from that date, *i.e.* March 1996. Accordingly, this part of the application does not comply with the requirements of Article VIII(2)(a) of the Agreement, under which, according to the case-law of the Chamber, the application must be made generally within six months from the date of the final decision or exceptionally, where no effective remedies exist, within six months from the date when the treatment complained of ended.

46. The Chamber therefore decides to declare the complaint under Article 4 of the Convention directed against the Republika Srpska inadmissible in its entirety.

2. Complaint under Article 9 of the Convention as directed against the Federation of Bosnia and Herzegovina concerning the denial of the right to perform civilian service as an alternative to military service

47. The Chamber notes that the applicant alleges a violation of his right to freedom of thought and conscience as protected under Article 9 of the Convention because his right to perform civilian service instead of military service has not been recognised.

48. The Chamber notes that the applicant has never applied to perform civilian service. Instead, on 16 January 2003, he applied to have recognised his previous work for NGOs and time spent working under a compulsory military work order as military/civilian service. It appears that he does not want to perform either military or civilian service in the future. In addition, according to the submissions of the respondent Party at a hearing before the Novi Grad Defence Department on 20 March 2003, he was instructed to apply to the Commission for Civilian Service to be recognised as a conscientious objector and allowed to perform civilian service instead of military service. It appears that to date he has not submitted any such application. Therefore, the Chamber finds that the applicant failed to exhaust the remedy available to him to be recognised as a conscientious objector. It does not appear on the facts submitted that the remedy was ineffective. It follows that this part of the application as directed against the Federation of Bosnia and Herzegovina is inadmissible for non-exhaustion of remedies, within the meaning of Article VIII(2)(a) of the Agreement.

3. Complaint of a violation of Article 6 or 13 of the Convention that there was no effective remedy to be recognised as a conscientious objector and allowed to perform civilian service in the alternative to military service

49. Although the applicant explicitly raises his complaint that there was no effective mechanism and remedy to be recognised as a conscientious objector under the heading of Article 6 of the Convention, the Chamber interprets the applicant's claim to be a claim under Article 13 in conjunction with Article 9. The applicant's complaint does not appear to concern the right to a fair trial in civil or criminal proceedings as protected by Article 6 of the Convention.

50. Examining whether the complaint under Article 13 in conjunction with Article 9 is admissible, the Chamber recalls that it has declared the complaint under Article 9 to be inadmissible for non-exhaustion of domestic remedies. The applicant did not apply to perform civilian service and appears

not to want to perform any civilian service in the future, but rather, to have recognised that he already performed his military/civilian service.

51. In these specific circumstances the Chamber will leave it open whether the mechanism to be recognised as a conscientious objector in the Federation of Bosnia and Herzegovina actually functioned at all times relevant for the case and whether effective remedies would have been available to the applicant had he been denied his right under the Law on Defence to perform civilian service instead of military service. The Chamber finds that the complaint under Article 13 of the Convention is inadmissible as manifestly ill-founded, as the applicant has never applied to the competent organ to be recognised as a conscientious objector and has never tried to use any of the remedies pointed out by the respondent Party.

4. Remaining issues raised by the application

52. The Chamber notes the applicant's claim that his service with the armed forces of the Republika Srpska from January 1995 to March 1996 was not taken into account when deciding whether he should perform military service in the Army of the Federation of Bosnia and Herzegovina. The Chamber notes that military service is not regulated on the level of the State of Bosnia and Herzegovina, but rather, it is regulated on the level of the Entities. The Chamber has considered *proprio motu* that this raises issues with regard to the applicant's right not to be discriminated against, as a displaced person, in the enjoyment of the rights under Article 4 (prohibition of forced labour) of the Convention.

53. The Chamber will therefore declare the part of the application related to possible discrimination against the applicant, as a displaced person, with regard to his rights under Article 4 of the Convention admissible as directed against the Federation of Bosnia and Herzegovina. However, it will declare inadmissible the part of the application related to possible discrimination against the applicant with regard to his rights under Article 4 of the Convention as directed against Bosnia and Herzegovina because there is no indication that Bosnia and Herzegovina is in any way responsible for the applicant's military service.

5. Conclusion as to admissibility

54. The Chamber concludes that the complaint against the Republika Srpska under Article 4 of the Convention is inadmissible in part as being incompatible with the Agreement *ratione temporis* and in part under the six-month rule. It also declares the complaint under Article 9 of the Convention to be recognised as a conscientious objector inadmissible for non-exhaustion of domestic remedies. It further declares the complaint under Article 6 of the Convention and Article 9 of the Convention in conjunction with Article 13 of the Convention inadmissible as manifestly ill-founded. Lastly, the Chamber declares the application inadmissible as against Bosnia and Herzegovina.

55. The Chamber declares admissible the remainder of the application as directed against the Federation of Bosnia and Herzegovina, *i.e.* the complaint relating to the fact that the applicant's alleged service with the armed forces of the Republika Srpska from January 1995 to March 1996 was not taken into account when deciding whether he should perform military service in the Army of the Federation of Bosnia and Herzegovina, as this complaint concerns his right not to be discriminated against, as a displaced person, in the enjoyment of the rights protected under Article 4 of the Convention.

B. Merits

56. 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.

57. The Chamber has repeatedly held that the prohibition of discrimination, stipulated in Article I(14) of the Agreement, is a central objective of the General Framework Agreement to which

the Chamber must attach particular importance. Article II(2)(b) of the Agreement affords the Chamber jurisdiction to consider alleged or apparent discrimination on a wide range of grounds in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Agreement, including, amongst others, the European Convention on Human Rights and the Protocols thereto.

58. The Chamber notes that the applicant complains that although he was forced to work for the benefit of the Republika Srpska Army from January 1995 to March 1996, the Federation of Bosnia and Herzegovina registered him in the military records of the Federation in order to call him to perform military service with the Army of the Federation of Bosnia and Herzegovina without taking this previous period of forced labour for the benefit of the Army of the Republika Srpska into account.

59. In his request to the Novi Grad Defence Department of 8 January 2001, the applicant states that he was subjected to discrimination (see paragraph 16 above). He alleges in this request that because of the war he was forced to register in the military records twice, once in 1995 in the military records of the Republika Srpska and a second time in 1996 in the military records of the Federation of Bosnia and Herzegovina. He alleges further that the service he was forced to perform was intentionally not classified and registered as a military obligation. He claims that as a result, after the end of the war, he was not entitled to have his service certified, while "nationally fit" soldiers, drawn from the Grbavica area, were entitled to obtain a certificate stating that they had fulfilled their military obligation. In his submissions to the Chamber the applicant does not discuss the issue of discrimination any further.

60. The Chamber recalls that on 23 February 2001 the Novi Grad Defence Department declared itself incompetent to deal with the applicant's request. Instead, it referred the applicant to the authorities of the Republika Srpska. It stated that "proving to have served in the Republika Srpska Army does not fall within the jurisdiction of this body". The applicant's appeal against this decision appears never to have been transmitted to any authority competent to deal with it (see paragraph 17 above).

61. The Federation of Bosnia and Herzegovina in its observations claims that the applicant never performed any military service in the Republika Srpska. It submits a letter of the Ministry of Defence of the Republika Srpska stating that the applicant was never registered in the military records of the Republika Srpska Army and that he has not performed his military service (see paragraph 35 above). The Federation of Bosnia and Herzegovina states further that it could not answer the question whether a person who performed military service in the Army of Republika Srpska could be summoned again to perform military service in the Army of the Federation of Bosnia and Herzegovina, as it had failed to obtain the relevant information from the Ministry of Defence.

62. The Federation of Bosnia and Herzegovina has informed the Chamber that compulsory work performed during the war and immediately after the war, no matter whether performed in the Republika Srpska or in the Federation of Bosnia and Herzegovina, is not taken into account when determining whether and for how long military service has to be performed, regardless of whether the compulsory work units set up by the municipalities performed special activities and tasks for the needs of the military forces or performed any other kind of work. However, the Federation also points out that Article 72 of the Law on Defence of the Republic of Bosnia and Herzegovina, applicable at the time, provided that compulsory work in units, institutions and headquarters of the armed forces of the Republic can give the person who performs it a status equivalent to that of a soldier with the same rights and benefits in respect to the question whether this service is recognised to account for the duty to perform military service (see paragraph 38 above). The Federation concludes that the time of engagement of some persons during the war and immediately thereafter does not have any influence on the duration of military service. Persons who were engaged in compulsory work during the war therefore are obliged to perform military service for the full time period set out in the Law on Defence of the Federation. From the observations of the Federation it appears that it does not consider that it discriminated in any way against the applicant or subjected him to differential treatment.

63. The Chamber, taking into account these submissions, will examine whether the Federation of Bosnia and Herzegovina has discriminated against the applicant in the enjoyment of his rights protected under Article 4 of the Convention.

64. Article 4 of the Convention reads as follows:

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour.
>
> 3. For the purpose of this article the term "forced or compulsory labour" shall not include:
>
> a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
>
> b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
>
> c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
>
> d. any work or service which forms part of normal civic obligations."

1. Scope of protection of discrimination in conjunction with Article 4 of the Convention

65. The Chamber notes that Article 4 paragraph 2 of the Convention contains a prohibition of forced or compulsory labour. It further notes that Article 4 paragraph 3(b) provides that "any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service" shall not fall under the prohibition of compulsory or forced work set out in Article 4 paragraph 2 of the Convention.

66. The Chamber recalls that it is the well-established jurisprudence of the European Court of Human Rights that the scope of protection in discrimination cases extends beyond those cases in which there is an accompanying violation of another Article of the Convention (see, *e.g.*, Eur. Court HR, *Belgian Linguistics* case, judgment of 23 July 1968, Series A no. 6, page 34). The European Court argues that a restricted application of discrimination only to cases in which an accompanying violation has been found would deprive the right not to be discriminated against of any practical value: If this were the case the sole effect of finding discrimination would be to aggravate the violation of another provision of the Convention. It has concluded that even if a restriction in itself finds support in the relevant provision of the Convention, the restriction must not be applied in a discriminatory way. It has followed the same approach in relation to Article 4 paragraph 2 and paragraph 3 of the Convention (see Eur. Court HR, *Van der Mussele v. Belgium,* judgment of 23 November 1983, Series A no. 70, paragraphs 42-46). Accordingly, in the present case even though the fact that the applicant is called for military service does in itself not fall under the prohibition of Article 4 of the Convention, it may violate the rights of the applicant if the fact that he is called for military service is discriminatory. The Convention and in particular Article 4 paragraph 3(b) cannot be understood to allow the State, without proper justification, to call some individuals for compulsory military service or equivalent compulsory civilian work several times when it calls others just once.

67. The Chamber therefore finds that the applicant's complaint about being called for military service falls within the scope of Article 4 of the Convention. It will examine whether the Federation of Bosnia and Herzegovina has discriminated against the applicant in the enjoyment of his rights protected under Article 4 of the Convention.

2. Elements to be considered in the examination of discrimination

68. In order to determine whether the applicant has been discriminated against, the Chamber must first determine whether the applicant is being treated differently from others in the same or a relevantly similar situation. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, *e.g.*, case no. CH/97/67, *Zahirović,* decision on admissibility and merits delivered on 8 July 1999, Decisions January-June 1999, paragraph 120; case no. CH/97/50, *Rajić,* decision on admissibility and merits delivered on 7 April 2000, Decisions January – June 2000, paragraph 53; and case nos. CH/98/706, CH/98/470 and CH/98/776, *Šečerbegović, Biočić and Oroz*, decision on admissibility and merits delivered on 7 April 2000, Decisions January – June 2000, paragraph 93).

(a) Differential treatment

69. The Chamber must determine whether the applicant was treated differently from others in a similar or relevantly similar situation. In this context the Chamber points out that in the present case the assessment of the relevant facts is obscured due to various factors. Firstly, the Federation of Bosnia and Herzegovina failed to clearly answer several explicit questions to illuminate the issue of discrimination. In particular, it failed to state whether a person who performed military service in the Army of the Republika Srpska could be summoned again to perform military service in the Army of the Federation of Bosnia and Herzegovina. Secondly, several armies existed on the territory of Bosnia and Herzegovina during the 1992-95 armed conflict and even to date, in spite of the fact that Bosnia and Herzegovina is one undivided, sovereign State, separate Armies of the Entities continue to exist. The Chamber notes that co-operation between these armies does not appear to function well and they appear not to exchange information on a regular basis. The Chamber also notes that it appears difficult for the applicant to bring evidence for his claim that he has served with the Army of the Republika Srpska from January 1995 to March 1996 or to clarify what status he had during that period. The Chamber recalls that the applicant claims that as a "nationally fit" soldier he would have been entitled to obtain a certificate stating that he had fulfilled his military obligation (see paragraph 16 above). The Chamber further recalls the submission of the respondent Party of 25 August 2003 in reply to the question whether persons who were mobilised during the course of the 1992-1995 armed conflict as soldiers in the military units of the Army of the Republic of Bosnia and Herzegovina or the HVO were being invited to perform their national service in the Army of the Federation (if they were of the drafting age). There the respondent Party stated, "those persons – recruits were not invited to serve if they were engaged in the units of the Army of the Republic of Bosnia and Herzegovina or the HVO for the period of six months (which was the duration of military service at the time)." Only if he had been engaged in units for less than six months are such persons/recruits called again to finish their six-month duty.

70. The Chamber recalls that in the period from 1992 to 1995 in principle all men, of a certain age, were drafted for the respective armies. They were sent summons and assigned to perform their duties. Members of the respective ethnic minorities and elderly or physically unfit men were sent to work in logistic support of the Armies, while the young and fit men were assigned to active military units.

71. The Chamber recalls that in March 1995 the applicant turned 18 years old. The Chamber is convinced that had he been of the ethnic majority, he would have served as a regular soldier with the respective army and today this service would have been recognised to account for his duty to perform military service.

72. The Chamber recalls that the applicant alleges that the duties he was assigned to in support of the Republika Srpska Army also involved dangerous work close to the front lines of the ongoing armed conflict. They included the cleaning of destroyed houses, the carrying of food containers to the front lines, and the gathering of coal. He also claims to have been sent to clean the electrical engineering school building and the Lukavica area.

73. The Chamber notes that the law knows the notion of equalising civilian tasks performed for the benefit of the army with military tasks. In particular, Article 72 paragraph 5 of the Law of Defence of the Republic recognised that compulsory work in units, institutions and headquarters of the armed forces of the Republic can give the person who performs it a status equivalent to that of a soldier

with the same rights and benefits in respect to the question whether this service is recognised to account for the duty to perform military service.

74. The Chamber recalls that the Federation claims that the applicant never served in the Army of the Republika Srpska. It claims that the applicant's compulsory work, albeit possibly benefiting the Army of the Republika Srpska, was carried out under the control of the municipality that set up compulsory work units and that work done in those units cannot count for military service. The applicant, on the other hand, claims that in the period from January 1995 to March 1996 he was a conscript of the Army of the Republika Srpska and as such forced to perform mostly logistical services for the benefit of Army. He also claims that he was under direct military command when doing so. Although doubts remain whether the applicant was integrated into a formal and direct military chain of command, the Chamber sees no reason to doubt the general truth of his description of his services in the Republia Srpska. It appears to be undisputed that the applicant, from January 1995 to March 1996, was obliged to work for the benefit of the Republika Srpska Army. Even if he was not, formally speaking, a member of the Republika Srpska Army, he was *de facto* under military command and performing tasks which, it appears, would normally have been carried out by soldiers. The Chamber also recalls that the work carried out by the applicant and other persons of the respective ethnic minorities for the benefit of the armies on the territory of Bosnia and Herzegovina during the armed conflict was no less dangerous than that performed by members in active units, in particular as they were trapped between armed soldiers from both sides. It concludes that the service performed by the applicant must be considered comparable to the service performed by a regular soldier.

75. If the applicant had performed comparable service during the same period of time for the benefit of the Federation Army (then the Army of the Republic of Bosnia and Herzegovina), then he would have been legally entitled under Article 72 paragraph 5 of the Law on Defence of the Republic of Bosnia and Herzegovina (see paragraph 22 above) to a status equivalent to that of a soldier. Under the law such service would, it appears, have to be taken into account for the purpose of determining his military service obligations. The respondent Party has stated, however, that "during the war no persons were engaged to work in units, institutions and headquarters of military forces, but all persons were militarily engaged, and based on military engagement their military service was recognised…" (Observations of 7 May 2003). If the applicant had performed his service on the basis of a military engagement, then it is clear that his service would have been taken into account.

76. The Chamber therefore finds that the applicant has been treated differently to persons who performed military or equivalent service in the Federation during the same period and that his registration in the military records of the Federation of Bosnia and Herzegovina in 1996 in order to call him to perform military service in the future, amounts to differential treatment.

(b) Legitimate aim and proportionality between the means employed and the aim sought

77. The Chamber must next examine whether the differential treatment of the applicant as compared to young men of the ethnic majority who served with the regular army pursued a legitimate aim. The Chamber considers that compulsory military service in itself pursues a legitimate aim. It is instituted "in the interests of national security", one of the aims listed in the second paragraph of Article 8 of the Convention. Moreover, as also pointed out by the Federation of Bosnia and Herzegovina, the Convention itself recognises the legitimacy of compulsory military service and of "service exacted instead of military service" by providing in Article 4 paragraph 3(b) that such service is not affected by the prohibition of "forced or compulsory labour" under Article 4 of the Convention.

78. However, even though military service as such pursues a legitimate aim, the Chamber cannot find that the differential treatment to which the applicant was subjected pursued a legitimate aim. It also finds that the Federation of Bosnia and Herzegovina failed to strike a fair balance between its own interest to have as many recruits as possible and the interests of the applicant not to be forced to perform compulsory military or civilian service in addition to the service he already performed from January 1995 to March 1996. It is inherently unfair, in the Chamber's view, that a person should be required to perform a full period of military service in each of the different armies in the same country.

79. The Chamber observes that the Federation of Bosnia and Herzegovina has not made any submissions regarding the legitimate aim pursued by registering the applicant for military service in light of the fact that he has already served under a compulsory work order in the Republika Srpska. No such legitimate aim is apparent to the Chamber. On the contrary, the conduct of the Federation and its authorities, including the fact that the Novi Grad Defence Department declared itself incompetent to deal with the question of whether the applicant's alleged previous service with the Army of the Republika Srpska must be recognised for the purposes of assessing the applicant's obligation to perform military service with the Army of the Federation, is also in violation of the obligations assumed by the Parties to Annex 7 in Article II(2) thereof. Under that provision, the Federation has undertaken "not to discriminate against returning refugees and displaced persons with respect to conscription into military service" and to "give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives".

80. In the applicant's case, the Novi Grad Defence Department has done the exact contrary: it has refused to take into any consideration the applicant's war-time experience as an "ethnically unfit" young man in the Republika Srpska and his service performed from January 1995 to March 1996 for the benefit of the Army of the Republika Srpska.

3. Conclusion

81. In conclusion, the Chamber finds that the involvement of young men during the 1992-95 armed conflict, no matter whether they were engaged in strictly military activities carrying weapons or forced to support the armed forces in compulsory work units, must be taken into account when deciding whether to call these men again to perform military service. The Chamber further finds that it cannot make any difference whether work units were set up by the municipalities or by the armed forces themselves as long as the activities carried out by such units are comparable and directly benefited the armed forces. The Chamber finds that the Federation of Bosnia and Herzegovina subjected the applicant to differential treatment when registering him in the military records in order to be called for military service with the Army without taking his pervious engagement in the Republika Srpska into consideration. The Chamber further finds that the differential treatment did not pursue a legitimate aim and therefore constitutes unjustified discrimination of the applicant's rights under Article 4 of the Convention on ethnic grounds.

VIII. REMEDIES

82. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement. In this connection, the Chamber shall consider issuing orders to cease and desist, monetary relief, and provisional measures.

83. The Chamber has found the Federation of Bosnia and Herzegovina, by registering the applicant in the military register, to have acted in violation of the applicant's right not to be discriminated against in his rights under Article 4 of the Convention.

84. The Chamber notes that the applicant has worked for 13 months for the benefit of the armed forces of the Republika Srpska from January 1995 to March 1996. This time must be recognised to account for his duty to perform military service. The Chamber notes that currently conscripts are obliged to perform military service in the Army of the Federation of Bosnia and Herzegovina for a time-period of six months or, respectively, nine months of civilian service, but in any case less than 13 months. Therefore it decides that it will order the Federation of Bosnia and Herzegovina not to call the applicant for military/civilian service with the Army of the Federation of Bosnia and Herzegovina.

85. In addition, the Chamber will order the Federation of Bosnia and Herzegovina to report to it no later than two months after the date on which this decision is delivered on the steps taken by it to comply with the above orders.

IX. CONCLUSION

86. For these reasons, the Chamber, decides:

1. unanimously, to declare the complaint against the Republika Srpska under Article 4 of the European Convention on Human Rights inadmissible in part as incompatible with the Agreement *ratione temporis* and in part under the six-month rule;

2. unanimously, to declare the application inadmissible insofar as it is directed against Bosnia and Herzegovina with regard to the applicant's right not to be discriminated against, as a displaced person, in the enjoyment of the rights protected under Article 4 of the European Convention on Human Rights;

3. unanimously, to declare inadmissible for non-exhaustion of domestic remedies the complaint under Article 9 of the European Convention on Human Rights concerning the failure to recognise the applicant as a conscientious objector as directed against the Federation of Bosnia and Herzegovina;

4. unanimously, to declare inadmissible as manifestly ill-founded the complaints under Article 6 of the European Convention on Human Rights and Article 9 of the European Convention on Human Rights in conjunction with Article 13 of the European Convention on Human Rights as directed against the Federation of Bosnia and Herzegovina;

5. unanimously, to declare the application admissible against the Federation of Bosnia and Herzegovina with regard to the applicant's right not to be discriminated against, as a displaced person, in the enjoyment of the rights protected under Article 4 of the European Convention on Human Rights;

6. by 13 votes to 1, that the Federation of Bosnia and Herzegovina violated the applicant's right not to be discriminated against, as a displaced person, in the enjoyment of the rights protected under Article 4 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article 1 of the Human Rights Agreement;

7. by 13 votes to 1, to order the Federation of Bosnia and Herzegovina not to call the applicant for compulsory military or civilian service in the future; and

8. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber no later than 10 December 2003 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber