DECISION ON ADMISSIBILITY AND MERITS

(delivered on 10 January 2003)

Case no. CH/02/9842

Eslam DURMO

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

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 Article VIII(2) and XI of the Agreement and Rules 52 and 66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant, who is of Egyptian origin, was granted citizenship of Bosnia and Herzegovina on 10 February 1995. On 19 July 2001 he was arrested and taken into custody on suspicion of having committed the criminal act of certifying untrue matters. On 5 October 2001 the applicant's release from pre-trial detention was ordered. However, instead of being *de facto* released, he was immediately taken into custody by the Ministry of Interior of the Federation of Bosnia and Herzegovina. The applicant was handed over to the authorities of the Arabic Republic of Egypt and transferred to Egypt on 6 October 2001. On the same day a decision of the Ministry of Interior of the Federation of Bosnia and Herzegovina revoking his citizenship was delivered to him. Since then no contacts with the applicant have been established.

2. The case raises issues under Articles 2 (the right to life), 3 (the prohibition of torture), 5 (the right to liberty and security), 8 (the right to respect for private and family life) and 13 (the right to an effective remedy) of the European Convention on Human Rights (hereinafter "the Convention"), Article 3 of Protocol No. 4 to the Convention (the prohibition of expulsion of nationals) and Article 1 of Protocol No. 7 to the Convention (procedural safeguards relating to expulsion of aliens) as well as in relation to discrimination in the enjoyment of the rights protected by these Articles.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 3 April 2002 by Ajla Durmo, the wife of Eslam Durmo, on behalf of her husband. The applicant is also represented by a lawyer.

4. On 10 June 2002 the case was transmitted to the respondent Parties under Articles 2, 3, 5, 8 and 13 of the Convention, Article 3 of Protocol No. 4 to the Convention, Article 1 of Protocol No. 7 to the Convention as well as in relation to discrimination in the enjoyment of the rights protected by these Articles.

5. On 24 June 2002 Bosnia and Herzegovina submitted a letter to the Chamber asking for two months extension of the time limit to submit the written observations.

6. On 26 June 2002 the Chamber received the written observations of the Federation of Bosnia and Herzegovina.

7. On 3 July 2002 the Chamber decided to extend the time limit for the submission of the written observations of Bosnia and Herzegovina until 24 July 2002.

8. The observations of the Federation of Bosnia and Herzegovina were communicated to the applicant on 4 July 2002.

9. On 22 July 2002 the Chamber received the applicant's written observations in reply to the written observations of the Federation of Bosnia and Herzegovina.

10. On 24 July 2002 the Chamber received the written observations of Bosnia and Herzegovina.

11. The Chamber communicated the written observations of Bosnia and Herzegovina to the applicant and to the Federation of Bosnia and Herzegovina and vice versa on 31 July 2002.

12. On 13 September 2002 the Chamber requested additional information from the respondent Parties.

13. On 16 September 2002 the Chamber received the reply of Bosnia and Herzegovina to this request.

14. On 16 September 2002 the Chamber asked the lawyer and the wife of the applicant for additional information.

15. On 20 September 2002 the Chamber received the reply of the Federation of Bosnia and Herzegovina.

16. The Chamber has not received a reply on behalf of the applicant to the request for additional information.

17. The Chamber communicated the additional observations of Bosnia and Herzegovina to the Federation of Bosnia and Herzegovina and vice versa and to the applicant on 11 October 2002.

18. The Chamber deliberated on the admissibility and merits of the case on 7 June 2002, 3 July 2002, 5 September 2002, 2 December 2002 and 8 January 2003. On 8 January 2003, the Chamber adopted the present decision on admissibility and merits.

III. FACTS

19. On 10 February 1995 Eslam Ahmed Faragalla was granted citizenship of Bosnia and Herzegovina. After Eslam Ahmed Faragalla married Ajla Durmo, a citizen of Bosnia and Herzegovina, he changed his family name into "Durmo" through regular legal proceedings and changed all his documents to the name Eslam Durmo. The respondent Parties are of the opinion that the applicant's name is Al Husseiny Helmy Arman Ahmed and that he uses Eslam Ahmed Faragalla and Eslam Durmo as false names.

20. On 19 July 2001, the applicant was arrested and taken into custody on suspicion of having committed the criminal act of certifying untrue matters under Article 353 paragraphs 1 and 2 of the Criminal Code of the Federation of Bosnia and Herzegovina.

21. On 20 July 2001 the Municipal Court II in Sarajevo issued a procedural decision opening an investigation against the applicant.

22. On the same day, the investigative judge of the Municipal Court II in Sarajevo ordered the custody of the applicant for a term of one month. Both the defence counsel and the Public Prosecutor appealed against this decision. The appeal on behalf of the applicant was rejected. The appeal of the Public Prosecutor was accepted. As a consequence, the procedural decisions on conducting the investigation and on ordering custody were altered in the sense that they refer to the applicant as "Al Husseiny Helmy Arman Ahmed" instead of to Eslam Durmo.

23. On 17 August 2001 the Panel of the Municipal Court II in Sarajevo extended the detention of Eslam Durmo for two further months.

24. On 5 October 2001 the Ministry of Interior of the Federation of Bosnia and Herzegovina issued a procedural decision depriving the applicant of the citizenship of Bosnia and Herzegovina on the grounds that he has been sentenced to ten years of imprisonment in Egypt and that there is a reasonable suspicion that he has committed a criminal offence in Bosnia and Herzegovina.

25. On 5 October 2001 the Municipal Court II in Sarajevo issued a procedural decision terminating the detention of the applicant. The criminal proceedings against the applicant in Bosnia and Herzegovina are still pending.

26. Immediately after his pre-trial detention was terminated, the applicant was "taken over" by members of the Ministry of Interior of the Federation of Bosnia and Herzegovina and kept at the "Dom Armije" in Sarajevo. After this, the applicant was brought to the Sarajevo International Airport where he was handed over to Egyptian police officers who deported him to the Arabic Republic of Egypt on 6 October 2001. According to the Federation of Bosnia and Herzegovina, these actions were taken in agreement with the BiH Coordination Team For the Fight Against Terror which was established by the Council of Ministers of Bosnia and Herzegovina.

27. According to the delivery slip which the Federation of Bosnia and Herzegovina provided the Chamber with on 20 September 2002, the decision on revocation of citizenship was delivered to the applicant on 6 October 2001.

28. On 8 October 2001 the Ministry of Interior of the Federation of Bosnia and Herzegovina submitted to the BiH Ministry of Civil Affairs and Communications the procedural decision on revocation of citizenship.

29. On 24 December 2001 the Ministry of Interior of the Federation of Bosnia and Herzegovina requested the Embassy of the Arabic Republic of Egypt in Sarajevo and Interpol Bosnia and Herzegovina to provide it with information regarding the whereabouts of Eslam Durmo.

30. On 21 May 2002 the Interpol office in Sarajevo informed the Ministry of Interior of the Federation of Bosnia and Herzegovina that it had received information from Cairo Interpol that court proceedings in Egypt had been initiated, that the applicant's family was informed about these proceedings and that the applicant was entitled to a lawyer in these proceedings. The Chamber is not informed whether these court proceedings concern the decision by which the applicant already was convicted (see paragraph 24 above) or whether these proceedings concern new accusations.

IV. RELEVANT LEGISLATION

1. Law on Citizenship of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, OG BiH No. 13/99)

31. Article 1 provides as follows:

> "(1) This Law determines the conditions for the acquisition and loss of citizenship of Bosnia and Herzegovina (hereinafter: the citizenship of BiH), in accordance with the Constitution of Bosnia and Herzegovina.
> (2) The citizenship Laws of the Entities must be compatible with the Constitution of Bosnia and Herzegovina and with this Law."

32. Article 23 provides, insofar as is relevant, as follows:

> "Citizenship of Bosnia and Herzegovina may be withdrawn in the following cases:
> (1) when the citizenship of Bosnia and Herzegovina was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant, (...)"

33. Article 24 provides, insofar as is relevant, as follows:

> "(1) The citizenship of Bosnia and Herzegovina is lost by release, renunciation or withdrawal on the day of notification to the person concerned of the legal decision. (...)"

34. Article 26 provides as follows:

> "All decisions on acquisition and loss of citizenship taken by the Entities or by Bosnia and Herzegovina must be taken in accordance with Articles 30 and 31."

35. Article 30 provides, insofar as is relevant, as follows:

> " (...)
> (2) Decisions under Articles 6, 7, 8, 9, 10, 11, 12, 21, 22 and 23 are taken by the competent authority of the Entity. (...)"

36. Article 31 provides, insofar as is relevant, as follows:

"(1) The decisions referred to in Article 30, paragraph 2, with the exception of decisions taken under Article 6, 7 and 8, must be submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina within three weeks of the date of the decision.

(2) The decision of the competent authority of the Entity becomes effective two months following its submission to the Ministry of Civil Affairs of Bosnia and Herzegovina, unless this Ministry concludes that the conditions of Articles 9, 10, 11, 12, 21, 22 and 23 have not been fulfilled. (…)"

2. The Law on Citizenship of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, OG FBiH No. 43/01)

37. Article 1 provides as follows:

"This law shall regulate the conditions for the acquisition and loss of citizenship of the Federation of Bosnia and Herzegovina (hereinafter: the Federation), in accordance with the Constitution of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina and the Law on Citizenship of Bosnia and Herzegovina (hereinafter: the Law on BH Citizenship) (Official Gazette of Bosnia and Herzegovina, no.13/99).

38. Article 24 provides, insofar as is relevant, as follows:

"One may be deprived of the citizenship of the Federation in the following cases:

(1) if the citizenship of the Federation was obtained on the basis of fraud, false information or by hiding any relevant fact that may refer to the claimant; (…)"

39. Article 26 provides as follows:

"Citizenship of the Federation shall cease by renunciation, withdrawal and depriving from the date of delivery of the valid decision to a person to which the administrative decision refers. If the permanent residence of such person is not known or may not be determined, the citizenship of the Federation shall cease on the date of publishing of the valid decision in the Official Gazette of the Federation of Bosnia and Herzegovina.

The citizenship of the Federation shall cease under force of law pursuant to Articles 16, 17 and 18 of this Law on the date when the person in question acquires the citizenship of some other state."

40. Article 28 paragraph 3:

"The decision granting citizenship of the Federation under paragraph 2 of this Article, as well as the decision revoking citizenship of the Federation on the basis of Article 14 of this Law is issued by the competent Ministry of the Federation, except for the decision on renouncing citizenship, for which the Ministry of Civil Affairs and Communications is competent, as under Article 30 paragraph 1 of the Law on Citizenship of Bosnia and Herzegovina."

41. Article 33 provides, insofar as is relevant, as follows:

"The (…) procedural decision on cessation of citizenship of the Federation under Article 21, 22 and 24 of this Law, (…) must be submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina within three weeks of the date of issuance of the procedural decision. The procedural decision shall enter into force two months after being submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina if this Ministry does not determine that conditions for (…) withdrawal or deprivation of citizenship, (…) under the Law on Citizenship of Bosnia and Herzegovina are not fulfilled. (…)"

3. The Law on Administrative Procedures (Official Gazette of the Federation of Bosnia and Herzegovina, OG FBiH No. 2/98, 48/99)

42. Article 139 provides, insofar as is relevant, as follows:

(1) A body may directly solve the issue in expedite procedure:

(…)
4) when the issue concerns urgent measures in the public interest which can not be delayed, and facts based on which the decision has to be grounded are established or at least made probable.

43. Article 227 provides as follows:

(1)An appeal against a decision shall be submitted within 15 days if the law does not envisage it in a different way.
(2)Deadline for the appeal for each person and each body to which the decision was sent shall be calculated from the day of delivering the decision.

44. Article 228 provides, insofar as is relevant, as follows:

(1)The decision cannot be implemented during the period in which it is possible to file the appeal. After a properly stated appeal the decision cannot be implemented until the decision which is made in regard to the appeal is sent to the party.

(2)Exceptionally, the decision can be implemented during the appeal period, as well as after filing the appeal, if it was foreseen by the law or if it is the matter of urgent actions (Article 139, Item 1 line 4) or if the delay of implementation would cause irreparable damage to any of the parties. In the latter case, it is possible to seek an adequate insurance from the party whose interest is to carry out implementation and to condition the implementation by this insurance.

4. The Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, OG FBiH No. 43/98, 23/99 of 20 November 1998)

45. The "Code of Criminal Procedure (hereinafter "the Code of Criminal Proceedings") came into force on 28 November 1998, replacing the old Code of Criminal Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 26/86, 74/87, 57/89, 3/90 and Official Gazette of the Republic of Bosnia and Herzegovina, No. 2/92, 9/92).

46. Chapter XXXI of the Code of Criminal Procedure regulates the procedure for "extradition of persons who have been charged or convicted".

47. Article 506 provides, insofar as is relevant, as follows:

1. "The extradition of persons who have been charged or convicted from the territory of the Federation shall be done in accordance with the provisions of this law unless the law of Bosnia and Herzegovina or an international treaty specifies otherwise. …."

48. Article 507 provides, insofar as is relevant, as follows:

"The prerequisites for extradition are as follows:
1. that the person whose extradition is sought is not a Bosnia and Herzegovina or a Federation national;
2. ….;
3. that the crime for which extradition is requested has not been committed in the Federation, against it or against its citizen;
4. that the crime for which extradition is sought constitutes a crime both under domestic law and under the law of the state in which it was committed;
5. that the crime for which extradition is sought does not constitute a political or a military crime;
6. ….;
7. …..
8. …
9. that there be sufficient evidence to support a reasonable suspicion that the foreigner whose extradition is sought did commit the particular crime or that a final verdict be already in existence.
10. ….. and if the extradition is not sought for a crime for which capital punishment is prescribed based on the law of the country seeking extradition, unless the country seeking extradition provides guarantees that the capital punishment shall not be pronounced or exercised. …"

49. Article 508 provides, insofar as is relevant, as follows:

1. "A proceeding for extradition of accused or convicted foreigners shall be instituted on the petition of the foreign state.

2. The petition for extradition shall be submitted through diplomatic channels.
3. The following must accompany the petition for extradition:
    1. the means of establishing the identity of the accused or convicted person (precise description, photographs, fingerprints, and the like);
    2. a certificate or other data concerning the foreigner's nationality;
    3. the indicting proposal or verdict or decision of custody or some other document equivalent to this decision, in the original or certified copy, containing the first and the last name of the person whose extradition is sought, and other data necessary to establishing his identity, a description of the crime, the legal name of the crime and evidence to support a reasonable suspicion;
    4. an extract from the text of the criminal law of the foreign state which is to be applied or which has been applied against the accused because of the crime for which extradition is being sought; and if the crime was committed on the territory of a third state, then an extract from the text of the criminal law on that state as well.
4. If these appendices are written in a foreign language, a certified interpretation in one of the official languages of the Federation should also be appended."

50. Article 509 provides, insofar as is relevant, as follows:

1. "The Ministry of Foreign Affairs of Bosnia and Herzegovina shall deliver the petition for extradition of a foreign national through the Ministry of Civil Affairs and Communications to the Federal Ministry of Justice which has a duty to immediately forward this petition to the investigative judge of the court in whose jurisdiction the foreign national is living or in whose jurisdiction he happens to be.
2. If the permanent or temporary residence of the foreigner whose extradition is sought is not known, The Federal Ministry of Justice shall first establish these facts through the Federal Ministry of Interior. …."

51. Article 510 provides, insofar as is relevant, as follows:

1. "In urgent cases, when there is a danger that the foreign national will flee or conceal himself, and if the foreign State has sought temporary custody of the alien, the competent law enforcement agency may arrest the alien to take him before the investigative judge of the competent court on the basis of the petition of the competent foreign authority, regardless of how it was sent. The petition must contain data for establishing the foreigner's identity, the nature and name of the crime, the number of the warrant, the date, place and name of the foreign authority ordering custody, and a statement to the effect that extradition shall be sought through regular channels.
2. When custody is ordered in conformity with Paragraph 1 of this article and the foreign national is brought before the investigative judge, after his examination the investigative judge shall report the arrest to the Ministry of Foreign Affairs of Bosnia and Herzegovina through the Ministry of Civil Affairs and Communications and through the Federal Ministry of Justice.
3. The investigative judge shall release the foreigner when the grounds for custody cease to exist or if the petition for extradition is not submitted by the date which he specifies in view of the remoteness of the state seeking extradition, that period not to be more than 3 months from the date when the foreigner was taken into custody. …."

V. ALLEGED AND APPARENT VIOLATIONS OF HUMAN RIGHTS

52. In the application form, the applicant's wife complains about a violation of Articles 2 and 3 of the Convention, as by his expulsion to Egypt the applicant would allegedly be subjected to torture, inhuman and degrading treatment and he could face the death penalty. She further complains that the applicant's rights under Article 5 to the Convention are violated by arresting and detaining him without any legal ground immediately after he was released from pre-trial detention. She also alleges that the deportation of the applicant constitutes a violation of Articles 6, in particular the presumption of innocence, and 8 of the Convention and Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7 to the Convention. The applicant's lawyer complains that the applicant did not have any domestic remedies in relation to the alleged violations. The lawyer also raises the issue of discrimination regarding the course of the applicant's arrest and detention after the cancellation of the pre-trial detention.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

53. Bosnia and Herzegovina, in its written submissions of 24 July 2002, claims that the case is inadmissible. Firstly, Bosnia and Herzegovina argues that the applicant has not exhausted the available domestic remedies since he failed to initiate administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina. Bosnia and Herzegovina also claims that the applicant did not wait six months from the moment he was released from pre-trial detention before submitting the application, thereby being in breach of the six months rule under Article VIII(2)(a) of the Agreement. Bosnia and Herzegovina finally claims that it is not responsible for any of the acts from which the alleged violations of the applicant's rights as protected by the Convention arise, since the competent organs of Bosnia and Herzegovina did not participate in the extradition of the applicant and did not know about the extradition. In its additional submissions, Bosnia and Herzegovina argues that the BiH Coordination Team For the Fight Against Terror is not an organ of (the State of) Bosnia and Herzegovina and that its institutions were not involved in the expulsion of the applicant.

54. As to the merits, Bosnia and Herzegovina claims that the procedure for withdrawal of citizenship was conducted in accordance with applicable provisions of the Law on Citizenship of Bosnia and Herzegovina and the Law on Citizenship of the Federation of Bosnia and Herzegovina, which leads to the conclusion that the applicant's rights have not been violated.

B. The Federation of Bosnia and Herzegovina

55 The Federation submitted in writing an account of the facts which coincides in substance with the facts as established by the Chamber in paragraphs 19 to 29 above.

56. As to the admissibility, the Federation firstly argues that the case should be declared inadmissible *ratione personae* since the applicant used false names and identities. Secondly, the Federation claims that the application is inadmissible for non-exhaustion of domestic remedies. The lawyer of the applicant could have submitted an authorisation letter in order to receive the procedural decision on revocation of citizenship of the applicant and thereby be able to initiate an administrative dispute. The Federation finally claims that the applicant abuses his right to petition.

57. As to the merits, the Federation argues that the conditions for withdrawal of citizenship of the applicant were met. The decision on withdrawal was delivered to the applicant on 6 October 2001. At this moment the applicant became an alien, which created the obligation for the Federation to hand him over to the authorities of the Arabic Republic of Egypt in order to serve a sentence. The handing over of the applicant was in accordance with Article 1 of Protocol No. 7 to the Convention. The Federation requested the Egyptian authorities several times information regarding the whereabouts of the applicant, hereby complying fully with the Agreement.

58. In its additional submissions, the Federation states that at a meeting, held on 5 October 2001, on which occasion the expulsion of the applicant was discussed, the following persons were present: the Minister of the Federal Ministry of Justice, the Head of Department for the Fight Against Terrorism of the Services of the Criminal Police of the Ministry of Interior of the Federation of Bosnia and Herzegovina and the representatives of the Embassies of the United States of America and the Arabic Republic of Egypt in Sarajevo. The Federation further states that the BiH Coordination Team For the Fight Against Terror is an organ of (the State of) Bosnia and Herzegovina, since it was established by the Council of Ministers of Bosnia and Herzegovina. Finally, the Federation repeated its argument that the decision on revocation of citizenship was delivered to the applicant before he was handed over to the Egyptian authorities. To support this statement, the Federation provided the Chamber with the delivery note of the decision in question. This note shows 6 October 2001 as the date of delivery, without any time of delivery. The name of the delivering authority or official is not legible.

C. The applicant

59. The applicant claims that there were no legal grounds for his detention. He also claims that the conditions for revocation of his citizenship were not met and that he was handed over to the Egyptian authorities without any proceedings or procedural decision. Since there was no procedural decision, the applicant submits that he had no domestic remedies against the expulsion. The applicant finally submits that the sole purpose of the revocation of the citizenship of Bosnia and Herzegovina was to expel him.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

1. Admissibility against Bosnia and Herzegovina

61. Bosnia and Herzegovina has challenged the admissibility of the application on several grounds.

62. Bosnia and Herzegovina firstly argues that it cannot be held responsible for possible violations in the present case since it's competent organs have not taken any action from which a possible violation of the applicant's rights might arise. Bosnia and Herzegovina also denies that its organs were aware of the applicant's expulsion.

63. In regard to this argument of Bosnia and Herzegovina, the Chamber observes that there is no indication that the organs of Bosnia and Herzegovina have been involved in the proceedings and in the factual course of the expulsion concerning the applicant, nor that Bosnia and Herzegovina was aware of the expulsion. The Federation of Bosnia and Herzegovina was addressed and informed about the presence of Egyptian nationals within its territory who were believed to be connected to terrorism. According to the submissions and the replies of both respondent Parties, the Federation has had diplomatic contacts with the governments of the Arabic Republic of Egypt and the United States of America with regard to the expulsion of the applicant. The decision on withdrawal of citizenship was issued by the Ministry of Interior of the Federation of Bosnia and Herzegovina and not by the State. Although the BiH Coordination Team for the Fight Against Terror is a State organ since it has been established by the Council of Ministers Bosnia and Herzegovina, the Chamber finds no indication that this Team was involved in this case.

64. The Chamber therefore finds that, insofar as the application is directed against Bosnia and Herzegovina, it is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

65. The Chamber will therefore declare the application as directed against Bosnia and Herzegovina inadmissible.

2. Admissibility against the Federation of Bosnia and Herzegovina

a. Admissibility with regard to the applicant's standing

66. The Federation argues that the application should be declared inadmissible *ratione personae* since the applicant has used false names and several identities.

67. The Chamber notes that, whether the applicant lived in Bosnia and Herzegovina under a false name or not does not affect his standing to complain about human rights violations allegedly suffered, as long as there is no doubt that he is the person detained and handed over by the authorities of the Federation of Bosnia and Herzegovina. The Federation has not contested that the

alleged victim of the conduct of its organs is the man married to Ajla Durmo. Therefore, the Chamber decides not to declare the application inadmissible with regard to the applicant's standing.

b. Exhaustion of domestic remedies

68. The Federation further argues that domestic remedies in this case are not exhausted because the applicant's lawyer, after having obtained due authorisation from the applicant, could have initiated domestic proceedings challenging the revocation of citizenship.

69. The Chamber considers that the alleged violation of the rights of the applicant is not directly the revocation of his citizenship, which merely represents one element in the overall proceedings. On this point the Chamber notes that the Convention does not protect the right to citizenship as such, nor is a violation of that right the subject matter of the case before the Chamber. The impugned act is the applicant's detention and the hand-over of the applicant into the custody of the Egyptian authorities.

70. The Federation has not substantiated how the remedy which it claimed was not exhausted, *i.e.* the initiation of an administrative dispute before the Supreme Court filed by the applicant's lawyer after the expulsion of the applicant, would have proven an effective remedy against the impugned act, namely, the detention of the applicant until his hand-over to the Egyptian authorities. On the contrary, the Federation states that the remedy available to the applicant is the initiation of domestic proceedings by the applicant's lawyer after the impugned act had taken place.

71. The Chamber is well aware that revocation of the applicant's citizenship raises questions of importance when assessing whether the applicant's case falls under Article 3 of Protocol No. 4 to the Convention, which forbids the expulsion of nationals, or under Article 1 of Protocol No. 7 to the Convention, which provides for procedural safeguards in respect to the expulsion of aliens. However, the Chamber finds that these questions do not raise issues of admissibility. These issues will therefore be discussed on the merits.

72. Accordingly, the Chamber decides not to declare the application inadmissible on the ground that the applicant has not exhausted the domestic remedies.

c. Admissibility of the complaints regarding the issue of the right to life, the issue of discrimination and regarding the presumption of innocence

73. On behalf of the applicant it is alleged that his delivery to the Egyptian authorities places his life at substantial risk and that this amounts to a violation of his right to life protected by Article 2 of the Convention. The applicant also alleges that his detention after the release from pre-trial detention was based on discriminatory grounds. The applicant further alleges that his deportation constitutes a violation of the presumption of innocence as laid down in Article 6(2) of the Convention. These allegations however were neither explained any further nor substantiated. It follows that these parts of the application are manifestly ill-founded, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare these parts of the application inadmissible.

d. Abuse of the right of petition

74. The Federation states, without any substantiation, that the applicant abuses his right to petition.

75. The Chamber considers that the applicant's allegations related to his detention and hand-over to the Egyptian authorities raise serious issues under the Agreement. The Chamber also considers that the application is not clearly based on untrue statements of facts, or devoid of any sound juridical basis or lodged solely for propaganda purposes. Accordingly, there is no question of abuse of the right of petition.

3. Conclusion on admissibility

76. The Chamber decides to declare the case inadmissible *ratione personae* with regard to Bosnia and Herzegovina. The application is, with the exceptions of the allegations in relation to the right to life, the issue of discrimination and the allegations of a violation of the presumption of innocence, to be declared admissible against the Federation of Bosnia and Herzegovina, since none of the argued grounds for declaring the case inadmissible has been established.

B. Merits

77. Under Article XI of the Agreement the Chamber must address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement.

1. The expulsion proceedings

78. Article 3 of Protocol No. 4 reads:

> "(1) No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
>
> "(2) No one shall be deprived of the right to enter the territory of the State of which he is a national."

79. With regard to the rights protected by Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7, the Chamber preliminarily notes that, while the Convention uses the terms "expelled" and "expulsion", the application of these provisions is not limited to cases in which the applicant is the subject of an "expulsion" in accordance with domestic legal terminology. The protection afforded by the two provisions applies also in cases in which a person is deported, removed from the territory in pursuance of a refusal of entry order or handed over to officials of a foreign power.

80. The Chamber further notes that Article 3 of Protocol No. 4 prohibits any expulsion of nationals, while Article 1 of Protocol No. 7 provides certain procedural safeguards for the expulsion of aliens. The Chamber will therefore examine whether the applicant was a national of Bosnia and Herzegovina at the time he was expelled to the Arabic Republic of Egypt on 6 October 2001, in order to establish which of the two provisions applies to the applicant's expulsion.

a. The applicant's citizenship status at the time of expulsion

81. On 10 February 1995 the applicant obtained both the citizenship of Bosnia and Herzegovina and that of the Federation of Bosnia and Herzegovina, as it is not possible to be a citizen of the State without having citizenship of one of the Entities and vice versa.

82. The Federation argues that the procedural decision of revocation of citizenship of 5 October 2001 was delivered to the applicant before he was transported to Egypt on 6 October 2001 and that the applicant according to national law lost his citizenship of Bosnia and Herzegovina at the moment of delivery of the abovementioned decision. Applying this reasoning, the Federation concludes that the applicant was an alien when he was expelled.

83. The Chamber, however, establishes for the following reasons that the applicant was a national of Bosnia and Herzegovina when he was expelled.

84. The Federation argues that the applicant lost his citizenship at the time of the delivery to him of the decision on revocation on 5 October 2001. This opinion is in accordance with Article 24 of the State Law on Citizenship, providing that citizenship is lost on the day of notification of the decision to the person concerned.

85. However, although having explicitly been requested to do so, the Federation failed to provide evidence that the decision on revocation was delivered to the applicant before he was handed over to the authorities of the Arabic Republic of Egypt. The Chamber notes that the Federation provided the delivery slip. However, since it cannot be concluded from this delivery slip at what time exactly, that is to say before or after the applicant was handed over, and by whom this decision was delivered to the

applicant, the Chamber considers that it cannot be determined that the decision on revocation of his citizenship was delivered to the applicant before he was handed over to the Egyptian authorities.

86. The Chamber therefore establishes that, regardless of the question whether the requirements for withdrawal of citizenship were met, since it cannot be seen that the decision was delivered before the expulsion, the applicant, according to Article 24 of the Law on Citizenship of Bosnia and Herzegovina, had not lost his citizenship of Bosnia and Herzegovina at the moment he was expelled to the Arabic Republic of Egypt.

87. Furthermore, the Laws on Citizenship of both Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina require that the decision revoking the applicant's citizenship is submitted to the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina (Article 31 of the State law and Article 33 of the Federation law). According to a literal reading of the law, the decision does not become effective until two months after this submission and under the condition that this Ministry concludes that the conditions of, in this case, Article 23 of the State law and Article 24 of the Federation law, have been fulfilled.

88. The Chamber notes that, despite the fact that the Ministry of Interior of the Federation of Bosnia and Herzegovina on 8 October 2001 transmitted the procedural decision of revocation of citizenship, there was no consent, as required in Article 31 paragraph 2 of the Law on Citizenship of Bosnia and Herzegovina, of the Ministry for Civil Affairs and Communications of Bosnia and Herzegovina to this procedural decision. The absence of this consent at the time of expulsion also results in establishing that the applicant had not lost his citizenship of Bosnia and Herzegovina at the time he was expelled.

89. The Chamber notes that the laws of the State and the laws of the Federation regarding the issue of citizenship are not harmonised since they provide for different requirements. However, according to both the State Law and the Federation Law, the applicant had not lost his citizenship of Bosnia and Herzegovina at the time of expulsion. The Chamber therefore establishes that the applicant was a national of Bosnia and Herzegovina at the time he was expelled. Article 3 of Protocol No. 4 is therefore applicable.

b. Conclusion as to the applicant's expulsion

90. Since pressure by the authorities of the United States of America and the Arabic Republic of Egypt to speed up the proceedings and to act according to their command cannot exempt the Federation from its obligations under domestic law and the Agreement, the Chamber finds that the Federation of Bosnia and Herzegovina violated Article 3, paragraph 1 of Protocol No. 4 to the Convention. Article 1 of Protocol No 7 requires no discussion since the Chamber has established that the applicant was a citizen of Bosnia and Herzegovina at the time he was expelled.

2. The detention of the applicant

91. Article 5, paragraphs 1 (c) and (f) reads:

> "(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> …
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
> …
> f. the lawful arrest or detention of a person … against whom action is being taken with a view to deportation or extradition."

92. The Chamber notes that the applicant was arrested on 19 July 2001 and held in pre-trial detention from 20 July 2001 until 5 October 2001. This pre-trial detention was based on a procedural decision by the Municipal Court II in Sarajevo.

93. On 20 July 2001 the investigative judge of the Municipal Court II in Sarajevo passed a decision to open an investigation against the applicant based on reasonable suspicion that the applicant had committed a criminal act of certification of an untrue matter under Article 353 paragraphs 1 and 2 of the Criminal Code of the Federation of Bosnia and Herzegovina.

94. According to an official note of the investigative judge of the Municipal Court II in Sarajevo, the Minister of Justice of the Federation of Bosnia and Herzegovina on 5 October 2001 ordered - by phone and without supporting this order with any reasons - the Municipal Court II in Sarajevo to release the applicant immediately. In this note, the investigative judge of the Municipal Court II in Sarajevo stated that it was not possible to issue the written decision by which the applicant was released from pre-trial detention, which was required by the law.

95. On the same day, 5 October 2001, the investigative judge of the Municipal Court II in Sarajevo, did issue a procedural decision ordering the immediate release of the applicant with the reasoning that the prosecutor of Municipal Prosecutor's Office II in Sarajevo suggested the release of the applicant, which proposal was approved of by the defence counsel of the applicant.

96. According to the submissions of the Federation of Bosnia and Herzegovina, the applicant was released from pre-trial detention on 5 October 2001. However, it is undisputed that *de facto* the applicant's detention continued until he was handed over to the Egyptian authorities.

a. The applicant's detention until the order to release him

97. The Chamber notes that the applicant has not really challenged that, until the decision on his release, the Federation of Bosnia and Herzegovina has complied with the requirements of Article 5 paragraph 1 (c) of the Convention, the suspicion upon which the pre-trial detention was based being "reasonable". Accordingly the Chamber finds no violation of Article 5 of the Convention for the period from the time of the original arrest until the "release" of the applicant on 5 October 2001.

b. The applicant's detention from the order to release him until the hand-over

98. The Chamber recalls that it was ordered that the applicant was to be immediately released from detention. From the information provided by the Federation to the Chamber, it cannot be concluded at what exact time on 5 October 2001 the applicant was supposedly released from pre-trial detention. It is however undisputed that, although the applicant was ordered to be immediately released, and despite no further order for detention was issued, the applicant was without ever being *de facto* released, taken into custody again by officials of the Ministry of Interior of the Federation of Bosnia and Herzegovina. It remains unclear in this context whether the applicant was informed about his release from pre-trial detention and hence whether he learnt that his detention now had a different quality as it was based on different grounds.

99. The Chamber must now examine whether this second period of detention was justified under Article 5 paragraph 1(f) of the Convention which allows the "lawful arrest or detention of a person…against whom action is being taken with a view to deportation or extradition".

100. The Chamber notes that in order to rely on Article 5 paragraph 1(f) of the Convention as a justification for the detention of the applicant the Federation needs to fulfil two conditions: the arrest and detention must be "lawful" and, in addition, against the person arrested and detained action must be taken "with a view to deportation or extradition".

101. Firstly, therefore, the Federation would need to demonstrate that the detention was "lawful". The detention of the applicant can only be considered as being "lawful" under the condition that it complies with the procedure prescribed by law. The Convention here refers back essentially to domestic law, but it also requires that any deprivation of liberty be in conformity with the purpose of Article 5, namely to protect individuals from arbitrariness. Hence, the lawfulness would require the Federation to follow a procedure in accordance with the procedural requirements of the domestic law. In addition, Article 5 paragraph 1(f) requires the Federation to ensure that the aim and essence of Article 5 of the Convention are observed and that the detention was not arbitrary.

102. The Federation must have shown that it passed a detention order grounded on a legal basis and informed the applicant about the reasons for his detention and that there was a possibility for the applicant to challenge the decision. However, the Federation has failed to demonstrate that there was an order for continued detention, or, in the alternative, to demonstrate that domestic law entitles it to detain the applicant in view of a possible expulsion upon which the detention of the applicant was based. The Federation has further failed to substantiate that it followed proper legal procedures when keeping the applicant in detention subsequent to the order to release him from pre-trial detention.

103. A minimum requirement of legal procedure for a legal detention is the requirement to inform the person subject to the detention, here the applicant, about the reasons for detention. In light of the fact that there is no decision ordering the custody of the applicant after his "release" and the applicant's lawyer was, despite his request, not informed nor allowed to have contact with him, it seems highly unlikely that he was duly informed that he was now held in detention in order to be expelled and, certainly, he would have had no opportunity to challenge his detention for expulsion purposes. The applicant's detention was thus not "lawful".

104. Secondly, Article 5 paragraph 1 (f) of the Convention requires that at the end of the detention the applicant should have either been deported or extradited. It is however undisputed that the applicant neither has been deported, nor has been extradited in accordance with the law.

105. There is no evidence to suggest that the *de facto* handing-over of the applicant can be interpreted to be a formal extradition. In particular, the Federation did not state or prove that it received an extradition request from the Arabic Republic of Egypt which meets the requirements for a formal extradition of persons who have been charged or convicted as provided for in Chapter XXXI of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina. The Federation was not informed of the indicting proposal against the applicant or the criminal law to be applied in the Arabic Republic of Egypt. The Chamber also notes that, in accordance with Article 508 of the Code of Criminal Proceedings, the prerequisites for extradition include the fact that the person whose extradition is sought, is not a national of Bosnia and Herzegovina or a Federation national.

106. In assessing the conditions to be met under Article 5 paragraph 1(f), the Chamber recalls the jurisprudence of the European Court of Human Rights in the *Bozano* case (Eur. Court HR, *Bozano v. France,* judgement of 18 December 1986, Series A no. 111). In this case an Italian national convicted *in absentia* of murder was forcibly taken by French police officers to the Swiss border, where he was transferred to Swiss police custody without giving him a chance to contact his wife or lawyer or to nominate a country of expulsion. This occurred after a French court had refused to order extradition to Italy and the French government had ordered the applicant Bozano's expulsion. The European Court ruled that: "Depriving Mr. Bozano of his liberty in this way amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of 15 May 1979 by the Indictment Division of the Limoges Court of Appeal, and not to "detention" necessary in the ordinary course of "action ... taken with a view to deportation" and that hence there was no justification under Article 5 paragraph 1(f) of the Convention (see paragraph 60, *Bozano*). It concluded that the detention had been arbitrary and did not fulfil the requirements of a justification under Article 5 paragraph 1(f).

107. The Chamber notes that the jurisprudence of the European Court that an arbitrary detention does not meet the requirements of Article 5 paragraph 1(f) also applies here. The Chamber finds that in the present case the detention of the applicant was not aimed to carry out a legal expulsion in accordance with the rules and procedure as prescribed in the domestic law. The detention was aimed at keeping the applicant under control until his handing over to the Egyptian authorities. The Chamber considers that in the present case the detention for an aim other than a legal expulsion renders the detention arbitrary and incompatible with Article 5 paragraph 1 (f) of the Convention.

108. Hence, the Chamber finds that there was no justification under Article 5 paragraph 1 of the Convention for the Federation to keep the applicant in detention after the pre-trial detention was terminated. The detention in that period of time until the applicant was handed over to the custody of the Egyptian authorities constitutes a violation of the applicant's rights as protected by Article 5 paragraph 1 of the Convention.

3. Right to family life

109. In the application to the Chamber, the applicant is claimed to be a victim of a violation of Article 8 of the Convention, which reads as follows:

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

110. In view of its findings that there has been a violation of Article 5 of the Convention, and also in view of its findings in respect to the expulsion of the applicant, the Chamber does not consider it necessary to examine the case separately under Article 8 of the Convention.

4. Prohibition of Torture

111. Article 3 of the Convention reads:

> "No one shall be subject to torture or to inhuman or degrading treatment or punishment."

112. The wife of the applicant complains of a violation of Article 3 of the Convention with regard to the treatment she expects her husband to receive in detention in Egypt. She supports these allegations by referring to information published by Amnesty International. The applicant's lawyer claims that numerous reports of international organisations dealing with the protection of human rights allege that the Arabic Republic of Egypt is a state in which human rights are violated in a severe way and that it is almost top listed among states in this respect. The applicant's lawyer relies on the report from Amnesty International of 12 October 2001.

113. The Chamber has discussed in detail the jurisprudence of the European Court of Human Rights in expulsion cases in the cases CH/02/8679 *et al*, (Boudellaa et al., decision on admissibility and merits of 3 September 2002, paragraphs 253 - 261).

114. The law governing the complaint before the Chamber has been stated by the European Court of Human Rights in a number of judgements:

> "[T]he expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country" (*Ahmed v. Austria* judgement of 17 December 1996, Reports of Judgements and Decisions 1996-VI, para. 39, see also the *Soering v. the United Kingdom* judgement of 7 July 1989, Series A no. 161, p. 35, paras. 90-91; the *Cruz Varas and Others v. Sweden* judgement of 20 March 1991, Series A no. 201, p. 28, paras. 69-70; the above-mentioned *Vilvarajah and Others* judgement, p. 34, para. 103; and the *Chahal v. the United Kingdom* judgement of 15 November 1996, Reports of Judgements and Decisions 1996-V, p. 1853, paras. 73-74)."

115. The Chamber notes that on 3 May 1996, the UN Committee Against Torture adopted its report "Activities of the Committee Against Torture pursuant to Article 20 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Egypt. 03/05/96. A/51/44, paras. 180-222. (Inquiry under Article 20)". Under the heading "3. Conclusions of the Committee" it notes:

(...)

"204. Non-governmental organizations active in the field of human rights, while explicitly condemning terrorist acts comitted in Egypt by extremist groups, report that in this climate of confrontation torture by police forces, especially State Security Intelligence, has been regularly practised. Torture seems to be used not only to obtain information and extort confessions, but also as a form of retaliation to destroy the personality of the person arrested in order to intimidate and to frighten the family or the group to which the person arrested belongs."

(...)
"210. According to the Government, most of the allegations concerning torture in Egypt relate to individuals who have been accused or convicted of acts of terrorism. Those persons, or individuals or non-governmental organizations speaking on their behalf, have made allegations concerning their subjection to torture in order to prevent their conviction."
"211. The Committee is mindful of the fact that it is the responsibility of the Government of Egypt to combat terrorism in order to maintain law and order and it deplores and condemns unequivocally any act of violence and terrorism perpetrated by groups trying to destabilize the Egyptian institutions. The Committee wishes to point out, however, that under article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture."
(...)
"220. On the basis of this information, the Comittee is forced to conclude that torture is systematically practised by the security forces in Egypt, in particular by State Security Intelligence, since in spite of the denials of the Government, the allegations of torture submitted by reliable non-governmental organizations consistently indicate that reported cases of torture are seen to be habitual, widespread and deliberate in at least a considerable part of the country."
(...)

116. The Chamber further notes that on 17 May 1999 the UN Committee Against Torture passed "Conclusions and recommendations of the Committee against Torture: Egypt. 17/05/99. CAT/C/EGY, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention." It notes under the heading "Factors and difficulties impeding the application of the provisions of the Convention" in paragraph 10: "The on-going state of emergency in response to the terrorist threat. This seems to have created a culture of violence among certain elements of the police and security forces". Seriously concerned about "the large number of allegations of torture and even of death relating to detainees made against both the police and the State Security Intelligence" the Committee recommends "that Egypt takes effective measures to prevent torture in police and State Security Intelligence custody".

117. On 20 November 2002, the UN Committee Against Torture adopted "Concluding Observations: Egypt. 20/11/2002. CAT/C/XXIX/Misc.4 (Concluding Observations/Comments), Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and recommendations." It notes under the heading "D. Subjects of concern" in subparagraph (b) that the Committee is concerned about "The many consistent reports received concerning the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials, and the absence of measures ensuring effective protection and prompt and impartial investigations. Many of these reports relate to numerous cases of deaths in custody."

118. The Chamber further notes that Amnesty International, in its so called "urgent action" of 12 October 2001, states that in Egypt suspected members of armed Islamist groups are frequently tortured at branches of the State Security Intelligence.

119. In its letter of 22 November 2001 addressed to the Deputy Minister of the Ministry of Interior of the Federation of Bosnia and Herzegovina, Amnesty International states that it has documented the continuing widespread torture and ill-treatment of detainees in Egypt, including deaths in custody where torture had likely been the cause or a contributing factor. Amnesty International in addition states that over the last few years dozens of Egyptian citizens who were deported from various countries were held in incommunicado detention and interrogated by the State Security Intelligence. According to Amnesty International, several of these people were allegedly tortured in detention. This

letter also provides information on the basis of which it can be concluded that especially persons who are accused of membership of the armed Islamist group *al- Gihad* risk being subject to treatment contrary to Article 3 of the Convention. Amnesty International further states that it, as a matter of routine, sends its annual reports to heads of government.

120. Amnesty International, in its urgent action of 23 April 2002, states that the applicant was reportedly tortured while he was detained incommunicado. According to Amnesty International, the applicant, who was forcibly returned to Egypt from Bosnia and Herzegovina in October 2001, was put on trial on 16 March 2002, accused of membership of an armed Islamist group and arson attacks. Amnesty International further states that the applicant is being tried by an Emergency Supreme State Security Court and that the applicant at the start of the trial claimed that he had been tortured and demanded a forensic medical examination. Amnesty International finally states that no such examination had been conducted when he was next brought before the court on 20 April 2002.

121. The Federation states that on 22 May 2001 the Embassy of the United States of America informed the Ministry of Interior of the Federation of Bosnia and Herzegovina that two citizens of Egypt who are connected to terrorism are residing within the territory of the Federation. After receiving additional information from the Egyptian authorities, it was clear to the Federation that the applicant was one of these persons. It must have been clear to the Federation that the authorities of the Arabic Republic of Egypt were from the beginning interested in the applicant because of his alleged terrorist activities. The Chamber therefore notes that it can be concluded from the submissions of the Federation that the purpose for the request of the handing-over of the applicant was the suspicion that he is connected to terrorism, and that the Federation was aware of this purpose.

122. The Chamber has found that the expulsion of the applicant was requested for his alleged involvement in terrorist activities or membership of a terrorist organisation. In conjunction with the information from the aforementioned reports of the Committee Against Torture regarding Egypt and the Amnesty International reports, the Chamber concludes that substantial grounds have been shown that the applicant, by being expelled to the Arabic Republic of Egypt, faces a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The Federation therefore was under an obligation not to expel the applicant to the Arabic Republic of Egypt. The Federation did violate its duty to protect the applicant from torture, inhuman or degrading treatment or punishment by handing him over to the Arabic Republic of Egypt. There has accordingly been a violation of Article 3 by the Federation.

5. Right to an effective remedy

123. As the Chamber has recalled in *Galić v. The Federation of Bosnia and Herzegovina* (Case No. CH/97/40, decision of 12 June 1998, Decisions and Reports 1998), Article 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. The Chamber has already found that there have been violations with regard to the detention after the applicant was ordered to be released from pre-trial detention and the subsequent expulsion, since neither the continued detention nor the subsequent *de facto* expulsion were grounded on procedural decisions as required by domestic law. As it is clear that the applicant was not enabled to challenge his factual detention and expulsion, it follows that, in this respect, there has also been a violation of Article 13 of the Convention in conjunction with the found violations.

VIII. REMEDIES

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

125. On behalf of the applicant a compensation claim has been made in the amount of nine hundred thousand (900,000.00) Convertible Marks ("KM") in relation to the pecuniary and non-pecuniary damages allegedly suffered by the applicant himself and by his family. This claim includes

compensation for lost income to support the children and compensation for mental suffering of both the applicant and his family. Compensation for proceeding expenses is claimed in the amount of 2,531,10 KM according to the advocate tariff. The Federation summarily rejects the compensation claim as ill-founded, unspecified and in any event excessive.

126. The Chamber found violations of Article 3 of Protocol No. 4 to the Convention (expulsion); Article 3 (prohibition of torture) of the Convention, Article 5, paragraph 1 of the Convention (illegal detention) and Article 13 (effective remedy) of the Convention.

127. Considering its findings regarding the expulsion, the Chamber will order the Federation of Bosnia and Herzegovina to inquire into the circumstances surrounding the expulsion of the applicant to the Arabic Republic of Egypt with the aim to take appropriate actions with regard to the persons involved in and responsible for this expulsion, and to submit a report on the results of the investigations to the Chamber no later than six months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

128. The Chamber further will order the Federation of Bosnia and Herzegovina to compensate the applicant for the non-pecuniary damage suffered and in particular for the damage arising from the violations found with respect to the illegal detention under Article 5, the expulsion under Article 3 of Protocol No. 4 and the failure to comply with Article 3 in the amount of 10,000 KM. The Chamber further will order the Federation of Bosnia and Herzegovina to compensate the applicant for legal costs in the amount of 2,531,10 KM. These amounts are to be paid within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. As the applicant is currently not able to receive such compensation, the compensation shall be placed on an account for the applicant. If the applicant does not return to Bosnia and Herzegovina within twelve months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the compensation is to be paid to his wife and children living in Bosnia and Herzegovina.

129. The Chamber further will award simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in paragraph 128 for the implementation of the compensation award in full or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

130. For these reasons, the Chamber decides,

1. by 4 votes to 3, to declare the application inadmissible with regard to Bosnia and Herzegovina;

2. unanimously, to declare inadmissible the complaint in regard to the issue of the right to life;

3. unanimously, to declare inadmissible the complaint in regard to the issue of discrimination;

4. unanimously, to declare inadmissible the complaint in regard to the presumption of innocence;

5. by 6 votes to 1, to declare admissible the remainder of the application;

6. by 5 votes to 2, that the Federation of Bosnia and Herzegovina, violated the right of the applicant not to be expelled, as guaranteed by Article 3 of Protocol No. 4 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

7. unanimously, that there has been no violation of the right to liberty and security of person of the applicant as guaranteed by Article 5 paragraph 1 of the Convention, with regard to the period of time from the original arrest on 19 July 2001 until the release of the applicant from pre-trial detention on 5 October 2001;

8. by 5 votes to 2, that the Federation of Bosnia and Herzegovina violated the right to liberty and security of person of the applicant as guaranteed by Article 5 paragraph 1 of the Convention, with regard to the period from the release of the applicant from pre-trial detention on 5 October 2001 until the handing over of the applicant to the Egyptian authorities, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

9. by 5 votes to 2, that the Federation of Bosnia and Herzegovina violated the right of the applicant not to be subject to torture or to inhuman or degrading treatment or punishment as guaranteed by Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

10. by 5 votes to 2, that the Federation of Bosnia and Herzegovina, violated the right of the applicant to an effective remedy, as guaranteed by Article 13 of the Convention in conjunction with the violations found with regard to the detention after the applicant was ordered to be released from pre-trial detention and with regard to the subsequent expulsion, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

11. by 6 votes to 1, that it is not necessary to consider the case under Article 8 of the Convention;

12. by 5 votes to 2, to order the Federation of Bosnia and Herzegovina to inquire into the circumstances surrounding the expulsion to the Arabic Republic of Egypt of the applicant with the aim to take appropriate action with regard to the persons involved in and responsible for this expulsion, and to submit a report on the results of the investigations to the Chamber no later than six months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

13. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina, to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures, the sum of 10,000 Convertible Marks (Konvertibilnih Maraka, "KM") by way of compensation for non-pecuniary damages for mental suffering;

14. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina, to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures, the sum of 2,531,10 KM Convertible Marks (Konvertibilnih Maraka, "KM") by way of compensation for legal costs;

15. by 5 votes to 2, to dismiss the remainder of the applicant's claim for compensation;

16. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina to place the compensation on an account for the applicant. If the applicant does not return to Bosnia and Herzegovina within twelve months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the Federation of Bosnia and Herzegovina is ordered to pay the amounts of compensation established in conclusions 13 and 14 above to his wife and children in Bosnia and Herzegovina;

17. by 4 votes to 3, that simple interest at an annual rate of 10% (ten percent) will be payable on the sum awarded in conclusions 13 and 14 above from the expiry of the one-month period set for such payment until the date of final settlement of the sum due to the applicant under this decision; and

18. by 5 votes to 2, to order the Federation of Bosnia and Herzegovina to report to it within six months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures and thereafter every three months until full implementation of the Chamber's decision is achieved, on all steps taken to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mr. Mato TADIĆ
President of the Second Panel