



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 22 December 2003)

Case no. CH/03/14212

Enver SYLA

against

BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 December 2003 with the following members present:

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

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

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

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

I. INTRODUCTION

1. The applicant is a citizen of Serbia and Montenegro and of the Netherlands. On 2 April 2003 he was arrested by members of the Bosnia and Herzegovina State Border Service (the "State Border Service") in Neum during a routine border check, on the basis of an outstanding Interpol arrest warrant and due to the fact that he allegedly attempted to abscond from the authorities. Subsequent to his arrest, it is alleged that he again attempted to abscond from the authorities, but was detained and brought before the investigative judge of the Cantonal Court in Mostar on the same day. The investigative judge ordered that the applicant be detained for a period of 30 days. On 28 April 2003, the applicant's detention was extended by a panel of judges of the Cantonal Court for an additional period of two months. On 16 May 2003 the Court of Bosnia and Herzegovina (the "Court of BiH"), conducting extradition proceedings, ordered that the applicant remain in detention until such time as the extradition proceedings were concluded. The extradition proceedings concerned a request by the Federal Republic of Germany for the applicant to face charges of drug trafficking. On 19 May 2003, the Court of BiH issued a procedural decision establishing that the legal requirements for extraditing the applicant had been met. The applicant submitted an appeal against this procedural decision stating that none of the documents considered by the Court of BiH in the extradition proceedings had been delivered to him or his legal representative. On 27 May 2003, the appeal was rejected by the Appellate Panel of the Court of BiH as ill-founded. On 30 May 2003, the Bosnia and Herzegovina Ministry of Justice issued a procedural decision authorising the extradition of the applicant and on 12 June 2003 the applicant was extradited to the Federal Republic of Germany.
2. The application raises issues under Articles 5(1)(f) and 5(4) of the European Convention on Human Rights (the "Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 9 June 2003 and registered on the same day. The applicant is represented by Mr. Semir Kajtaz, a lawyer practising in Mostar.
4. In his application to the Chamber, the applicant requested that the Chamber order the respondent Party, as a provisional measure, to annul the decision on his extradition and to issue a decision ordering the renewal of extradition proceedings. On 3 July 2003, the Chamber decided not to order the provisional measure requested and decided to transmit the case to the respondent Party for its observations on admissibility and merits in accordance with Rule 49(3)(b) of the Chamber's Rules of Procedure.
5. On 21 August 2003, the Chamber received the respondent Party's written observations. This was transmitted to the applicant on 26 August 2003. The respondent Party's written observations failed to draw reference to a procedural decision issued by the Bosnia and Herzegovina Ministry of Justice (the "Ministry of Justice") on 30 May 2003 or the applicant's extradition on 12 June 2003. On 19 September 2003, the Chamber received the applicant's response to the written observations of the respondent Party. The applicant's legal representative also failed to draw reference to the procedural decision of 30 May 2003 or the applicant's extradition on 12 June 2003.
6. On 20 October 2003, the Chamber wrote to the applicant's legal representative requesting him to clarify the status of the extradition proceedings pending before the Court of BiH. The Chamber received a reply from the applicant's legal representative on 29 October 2003 stating that he had no information on whether the applicant remained in detention or had in fact been extradited. On 30 October 2003 the Chamber wrote to the respondent Party requesting it to clarify the status of the extradition proceedings pending before the Court of BiH. The Chamber received a reply from the respondent Party on 12 November 2003 that the applicant had been extradited on 12 June 2003.
7. The Second Panel deliberated on the admissibility and merits of the application on 3 July 2003, 10 October 2003 and 7 November 2003.

8. On 2 December 2003 the Second Panel relinquished jurisdiction of the application in favour of the Plenary Chamber in accordance with Rule 29(2) of the Chamber's Rules of Procedure.

9. The Plenary Chamber deliberated on the admissibility and merits of the applications on 5 December 2003 and adopted the present decision.

III. FACTS

10. On 2 April 2003, the applicant was apprehended by members of the State Border Service whilst attempting to cross the Bosnia and Herzegovina – Croatia border in Neum, on the basis of an Interpol arrest warrant (red notice), during a routine border check. It is not known to the Chamber whether the applicant was attempting to enter or exit Bosnia or Herzegovina, only that he was apprehended on the territory of Bosnia and Herzegovina. The Interpol warrant alleges that, during 2000-2002, the applicant and three named others, organised the importation of narcotics into the Federal Republic of Germany. The applicant was therefore considered a fugitive who was to face charges of drug trafficking in the Federal Republic of Germany. Upon being questioned by members of the State Border Service, the applicant allegedly escaped. He was later, on the same day, apprehended by the authorities and placed under arrest. Subsequent to his arrest, it is alleged that the applicant again attempted to abscond from the authorities, albeit unsuccessfully, and was detained by members of the State Border Service.

11. The applicant was brought before the investigative judge of the Cantonal Court in Mostar on the day of his arrest, whereupon it was ordered by the investigative judge that he be detained for a period of 30 days. His detention was ordered on the basis of Article 183 paragraph 1 in conjunction with Article 509 paragraph 3 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 50/01 and 27/02, hereinafter the "Federation Code of Criminal Procedure", see paragraph 34 below) on the basis that he attempted to evade the State Border Service whilst attempting to cross the border in Neum and that an Interpol arrest warrant had been issued by the Wiesbaden office in the Federal Republic of Germany against the applicant. The applicant was therefore to be detained pending a formal request from the Federal Republic of Germany for his extradition.

12. On 15 April 2003 the Cantonal Court received, by facsimile transmission, the Interpol arrest warrant and supporting documentation concerning the applicant's identity and the offences with which he was charged in the Federal Republic of Germany.

13. On 16 April 2003 the applicant was brought before the investigative judge of the Cantonal Court and informed of the facsimile transmission from Interpol. He was informed of his right to have a legal representative present during questioning, his right to state his defence, his right to remain silent and was informed that he was being detained on the basis of an Interpol arrest warrant. The applicant was further informed that he would be detained for a period of 45 days pending extradition. The applicant allegedly raised the objection at this stage that there were no legal conditions for his extradition, there was no formal writ for extradition and that the reasons for detaining him had not been assessed by the court.

14. According to the respondent Party, on 24 April 2003, a *note verbale* was transmitted to the organs of the respondent Party by the Federal Republic of Germany requesting the extradition of the applicant. However, the applicant contests the existence of such a document, as its contents have never been communicated to him. Additionally, despite a request from the Chamber, the respondent Party has failed to provide a copy of this *note verbale* of 24 April 2003.

15. On 28 April 2003, before the expiration of the previous procedural decision, a panel of judges of the Cantonal Court issued a procedural decision by which the applicant's detention was extended for an additional period of two months in accordance with Article 188(2) of the Federation Code of Criminal Procedure. On examination of this procedural decision, the applicant's detention was extended on the basis of Article 510 paragraph 1 of the Federation Code of Criminal Procedure (see paragraph 34 below). The procedural decision stated that the investigative judge of the Cantonal

Court proposed an extension to detention based on the request of the Office of the Public Prosecutor in Ulm, Federal Republic of Germany, as the 30 day time limit under the Agreement on Extradition between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany of 26 November 1970, taken over by Bosnia and Herzegovina (the "Extradition Agreement"), was not sufficient for obtaining and delivering all necessary documentation pertaining to the applicant's extradition. The procedural decision on extension was also based upon a memorandum submitted by the Sarajevo office of Interpol confirming that the Office of the Public Prosecutor in Ulm, Federal Republic of Germany had requested an extension of detention for an additional 45 days.

16. According to the respondent Party, on 15 May 2003, a formal written request, containing all relevant documentation, was communicated to the organs of the respondent Party by the Federal Republic of Germany requesting the extradition of the applicant. However, the applicant contests the existence of such a request, as it has never been communicated to him. Additionally, despite a request from the Chamber, the respondent Party has failed to provide a copy of the formal written request purportedly submitted on 15 May 2003.

17. On 16 May 2003 the Court of BiH, conducting extradition proceedings in accordance with Articles 132(1) and 416 of the Code of Criminal Procedure of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 35/03, hereinafter the "BiH Code of Criminal Procedure"), issued a procedural decision, ordering that the applicant remain in detention until such time as the extradition proceedings were concluded in accordance with Article 18 of the Extradition Agreement. In its decision, the Court of BiH recalled that Article 18 of the Agreement on Extradition with the Federal Republic of Germany permitted the authorities to detain individuals in temporary detention pending extradition for a period of up to 45 days. The applicant submitted an appeal against this decision on the basis that the Court of BiH was not competent to rule on extradition proceedings and due to the fact that there had been no formal request for his extradition. He complained that if there had in fact been a request, it had not been submitted to him or his legal representative. The applicant further argued that there was no legal basis for detaining him and the duration of his detention had not been specified, in violation of domestic law.

18. On 19 May 2003 the Court of BiH issued a procedural decision establishing that all legal conditions for extraditing the applicant had been met. The procedural decision stated that a request for extradition had been submitted by way of a verbal note on 24 April 2003 and a formal written request submitted on 15 May 2003 on the ground that there was a reasonable suspicion that, during the period of 2000-2002, the applicant had organised the importation of narcotics into the Federal Republic of Germany. The procedural decision further stated that the applicant had contested the allegations contained in the Interpol arrest warrant when he was brought before the investigative judge of the Cantonal Court. It was further stated that during the proceedings the applicant's identity was established; that he is not a citizen of Bosnia and Herzegovina; that the offence was not committed on the territory of Bosnia and Herzegovina or against citizens of Bosnia and Herzegovina; that it does not concern a political or military offence; that it is not an offence that is barred by a statute of limitations; that it is obvious from the case file that the extradition is not requested due to race, sex, nationality, ethnic origin, religious belief or political opinion; and that the death penalty may not be imposed for such an offence. Accordingly, the Court of BiH confirmed that all legal conditions were met for ordering the applicant's extradition.

19. The applicant submitted an appeal against the procedural decision of 19 May 2003 stating that none of the documents considered by the court in the extradition proceedings had been delivered to him or his legal representative, in violation of Articles 297(1), 419 and 420 of the BiH Code of Criminal Procedure (see paragraph 32 below). Moreover, the applicant complained that the court had failed to consider whether there was sufficient evidence to suspect that a criminal offence had been committed as required by Article 415 (see paragraph 32 below).

20. On 21 May 2003, the Appellate Panel of the Court of BiH issued a procedural decision rejecting the applicant's appeal against the procedural decision of 16 May 2003, as ill-founded. The Appellate Panel stated in its decision that there had been a request from the Federal Republic of Germany for the applicant's extradition to face charges of drug trafficking and that it had also requested that the applicant's detention be extended.

21. On 27 May 2003, the Appellate Panel of the Court of Bosnia and Herzegovina issued a procedural decision rejecting the applicant's appeal against the procedural decision of 19 May 2003 as ill-founded. The court stated that, under Article 420 of the State Code of Criminal Procedure (see paragraph 32 below), where there is a danger that an alien could abscond, extradition proceedings can be conducted regardless of the manner in which the request for extradition has been submitted. The court established that, in the present case, such a danger existed as the applicant had already attempted to abscond on more than one occasion. As to the complaint that neither the applicant nor his legal representative were provided with all relevant documentation in the extradition proceedings, the court held that the applicant was not deprived of his rights as he was heard by the investigative judge of the Cantonal Court in Mostar on 2 April 2003 and provided with legal representation to protect his defence rights.

22. On 30 May 2003 the Minister of Justice issued a procedural decision authorising the applicant's extradition. The Minister of Justice established the applicant's identity and that a request for extradition had been submitted by the Federal Republic of Germany. The Minister of Justice declared, on examination of the case file, that all legal conditions had been established by the Court of BiH for authorising the applicant's extradition to the Federal Republic of Germany.

23. On 12 June 2003, members of the Mostar Court Police handed the applicant over to the custody of authorised officials from the State Border Service at the Sarajevo International Airport. The applicant was then transferred into the custody of official of the Head Commissariat for Criminality in Goepingen, the Federal Republic of Germany and his extradition effected.

24. On 27 August 2003 the Court of BiH informed the Minister of Justice that the applicant was extradited on 12 June 2003.

IV. RELEVANT LAW

A. Constitution of Bosnia and Herzegovina

25. The Constitution of Bosnia and Herzegovina (hereinafter the "BiH Constitution"), contained in Annex 4 to the General Framework Agreement, entered into force upon the signature of the General Framework Agreement on 14 December 1995. The BiH Constitution sets forth the relations and responsibilities between Bosnia and Herzegovina and the Entities, including the Federation of Bosnia and Herzegovina.

26. Article III.1 of the BiH Constitution provides insofar as is relevant:

"Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities

"(1) Responsibilities of the Institutions of Bosnia and Herzegovina.

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

...

(g) International and inter-Entity criminal law enforcement, including relations with Interpol.

..."

"(3) Laws and Responsibilities of the Entities and the Institutions.

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

(a) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities

(b) The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.”

27. Annex II to the BiH Constitution provides for transitional arrangements, including the continuation of laws. Under Articles 2 and 3 of Annex II, it provides as follows:

“(2) All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina.”

“(3) All proceedings in courts or administrative agencies functioning within the territory of Bosnia and Herzegovina when the Constitution enters into force shall continue in or be transferred to other courts or agencies in Bosnia and Herzegovina in accordance with any legislation governing the competence of such courts or agencies.”

B. The Constitution of the Federation of Bosnia and Herzegovina

28. The Constitution of the Federation Bosnia and Herzegovina (hereinafter the “FBiH Constitution”), was adopted by the Constitutional Assembly of the Federation of BiH, at the session held on June 24, 1994 and published in the Official Gazette of the Federation of Bosnia and Herzegovina nos. 01/94 and 13/97, and entered into force at midnight on the same day.

29. Article 1(2) (as amended) provides:

“The Federation of Bosnia and Herzegovina is one of two entities composing the state of Bosnia and Herzegovina, and has all power, competence and responsibilities which are not within, according to the Constitution of Bosnia and Herzegovina, the exclusive competence of the institutions of Bosnia and Herzegovina.”

C. Code of Criminal Procedure of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 36/03, which entered into force on 1 March 2003)

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

Material Jurisdiction of the Court

“(1) The Court shall have jurisdiction to:

...

(e) decide any issue relating to international and inter-Entity criminal law enforcement, including relations with Interpol and other international police institutions, such as decisions on the transfer of convicted persons, and on the extradition and surrender of persons, requested from any authority in the territory of Bosnia and Herzegovina, by foreign states or international courts or tribunals;

...”

31. Chapter X, Section 6 of the State Code of Criminal Procedure, defines the circumstances for pre-trial detention:

Article 132

“(1) If there is a grounded suspicion that a person has committed a criminal offence, custody may be ordered against him:

- (a) if he hides or if other circumstances exist that suggest a possibility of flight;
- (b) if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices;
- (c) if particular circumstances justify a fear that he will repeat the criminal offence or complete the criminal offence or commit a threatened criminal offence, and for such criminal offences a prison sentence of five (5) years may be pronounced or more;
- (d) if the criminal offence is punishable by a sentence of imprisonment of ten (10) years or more, where the manner of commission or the consequence of the criminal offence requires that custody be ordered for the reason of public or property security. If the criminal offence concerned is the criminal offence of the terrorism, it shall be considered that there is a rebuttable presumption that the safety of public and property is threatened.

Article 134

“(1) Custody shall be ordered by a decision of the Court and on the motion of the Prosecutor.

“(2) A decision on custody shall contain: the first and last name of the person being taken into custody, the criminal offence he with which is charged, the legal basis for custody, explanation, instruction as to the right of appeal, the official seal and the signature of the judge ordering custody.

“(3) A decision on custody shall be delivered to the pertinent person at the moment of deprivation of liberty. The files must indicate the hour of the deprivation of liberty and the hour of the delivery of the decision.

“(4) The person taken into custody may appeal the decision on custody with the Panel (Article 24, Paragraph 6) within 24 hours of the receipt of the decision. If the person taken into custody is questioned for the first time after the expiration of this period, he may file an appeal during the questioning. The appeal with a copy of the minutes on questioning, if the person in custody has been questioned, and the decision on custody shall be submitted immediately to the Panel. An appeal shall not stay the execution of the decision.

“(5) If the preliminary proceedings judge or preliminary hearing judge does not accept the motion of the Prosecutor to order custody, he shall request that the Panel decide the issue (Article 24, Paragraph 6). Against the decision of the Panel ordering custody, the person taken into custody may file an appeal, which does not stay the execution of the decision. With respect to the delivery of the decision and filing of an appeal, the provisions of Paragraphs 3 and 4 of this Article shall apply.

“(6) In cases referred to in Paragraphs 4 and 5 of this Article, the Panel deciding the appeal must take a decision within 48 hours.”

Article 135

“(1) Before taking a decision ordering custody, the preliminary proceedings judge shall review whether there are grounds for a motion to order custody. Upon the decision of the preliminary proceedings judge, custody may last no longer than one (1) month following the date of deprivation of liberty. After that period, the suspect may be kept in custody only on the basis of a decision extending the custody.

“(2) Custody may be extended, upon a decision of the Panel (Article 24, Paragraph 6), following a substantiated motion of the Prosecutor, for no longer than two (2) months. An appeal against the decision of the Panel shall be allowed and it shall be decided by the Appellate Division Panel. An appeal does not stay the execution of the decision.

“(3) If the proceeding is ongoing for the criminal offence for which a prison sentence of ten (10) years may be pronounced or more, and if there are particularly important reasons, custody may be extended following a substantiated motion of the Prosecutor, for no longer than three (3) months. An appeal against the decision of the Panel shall be allowed and it shall be decided by the Appellate Division Panel. An appeal does not stay the execution of the decision.

“(4) If, before the expiration of the periods referred to in Paragraph 1 through 3 of this Article, an indictment has not been brought for confirmation, the suspect shall be released.”

32. Chapter XXXI, Section 1 of the BiH Code of Criminal Procedure, defines the circumstances for extraditing a suspect from Bosnia and Herzegovina to a foreign state:

Article 414

Regulations on Extradition

“(1) Extradition of suspects or accused or convicted persons from Bosnia and Herzegovina to another state shall be carried out under the provisions of this Code, unless otherwise determined by the legislation of Bosnia and Herzegovina or an international agreement.

(2) The procedure to hand over suspects or accused persons against whom criminal proceedings are ongoing before international criminal courts shall be regulated by special legislation.

Article 415

Requirements for Extradition

“(1) The requirements for extradition shall be as follows:

- (a) that a person whose extradition has been requested is not a citizen of Bosnia and Herzegovina;
- (b) that a person, whose extradition has been requested, has not been granted an asylum in Bosnia and Herzegovina, or that the person in question is not in the process of seeking asylum in Bosnia and Herzegovina;
- (c) that the offence on the basis of which the extradition has been requested was not committed in the territory of Bosnia and Herzegovina, against it or its citizen;
- (d) that the offence on the basis of which the extradition has been requested constitutes a criminal offence under the domestic legislation as well as under the legislation of the state in which it was committed;
- (e) that the offence on the basis of which the extradition has been requested is not a political or military criminal offence;
- (f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the domestic legislation before the alien is taken into custody or examined as a suspect or accused, that the alien whose extradition has been requested has not been convicted for the same criminal offence by a domestic Court or that he has not been validly released by the domestic Court with regard to the same offence, unless conditions have been obtained for a renewal of the criminal proceedings as provided for by this Code, or that no criminal proceedings were instituted in Bosnia and Herzegovina against the alien for the same criminal offence, and if the proceedings were instituted for an offence committed against a citizen of Bosnia and Herzegovina it is required that compensation insurance was deposited for the claim under property law of the injured party;
- (g) that the identity of the person whose extradition has been requested is verified;
- (h) that there is sufficient evidence for a suspicion that the alien whose extradition has been requested committed a criminal offence or that there is a valid verdict;
- (i) that the extradition of an alien has not been requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views and that his extradition has not been requested on the grounds of a criminal offence that carries a death sentence under the legislation of the country which has requested the extradition unless the state which has requested the extradition has granted a guarantee that no death sentence shall be pronounced or executed.

“(2) Domestic legislation, in terms of Item d) of Paragraph 1, of this Article shall be understood to mean the legislation of Bosnia and Herzegovina, legislation of the Federation of Bosnia and Herzegovina, legislation of Republika Srpska and legislation of the Brčko District of Bosnia and Herzegovina.

“(3) Domestic Court, in terms of Item f) of Paragraph 1, of this Article shall be understood to mean all Courts in the territory of Bosnia and Herzegovina in charge of criminal matters.”

Article 416

Request for Extradition

“(1) The procedure for the extradition of suspect, indicted or convicted aliens shall be initiated upon request of a foreign state.

“(2) The request for extradition shall be submitted through diplomatic channels.

“(3) The following items must be attached to the request for extradition:

(a) items for establishing the identity of the suspect, indicted or convicted person (precise description, photographs, fingerprints etc.);

(b) certificate or other data on the citizenship of the alien;

(c) indictment or verdict or decision on detention or any other act which is equivalent to this decision, in the original copy or certified transcript, which should indicate the name and surname of the person whose extradition has been requested and other data necessary for verifying his identity, description of the offence, legal name of the criminal offence and evidence for suspicion;

(d) excerpt from the text of the criminal code of a foreign state which is to be applied or has been applied to the suspect, indicted or convicted person for the offence on account of which the extradition has been requested, and if the offence has been committed on the territory of a third country, then also the excerpt from the text of the criminal code of that country.

“(4) If the attachments referred to in Paragraph 3 of this Article have been written in a foreign language, a certified translation into one of the official languages in Bosnia and Herzegovina should be attached.”

Article 417

Delivery of the Request for Extradition

“(1) The competent authority of the state requesting the extradition shall deliver the request for extradition of an alien via the competent Ministry of Bosnia and Herzegovina. Upon receipt of the request, the competent Ministry of Bosnia and Herzegovina shall have to deliver that request to the Prosecutor without delay.

“(2) Upon receipt of the request, the Prosecutor shall examine whether the request for extradition has been submitted in line with Article 416 of this Code. If the Prosecutor has established that the request is not complete, it shall request the competent Ministry of Bosnia and Herzegovina to inform the foreign state thereon as well as the competent authority of the state requesting extradition to remove the shortcomings.”

Article 418

Imposing Detention

“(1) If the request corresponds to the requirements referred to in Article 416 of this Code, the preliminary proceedings judge shall issue an order to detain the alien, if there are reasons for detention referred to in Article 132 of this Code, or the judge shall take other measures to ensure his presence, unless it is clear from the request itself that extradition is uncalled-for.

...”

Article 419

Questioning and Defence

“(1) The Prosecutor, upon verification of the identity of the alien, shall without delay communicate to the alien why and on grounds of which evidence his extradition has been requested, and shall call on him to state whatever he has in his defence. The minutes shall be made on the questioning and defence of the alien.

“(2) The Prosecutor shall instruct the alien of his right to retain a defence attorney of his choice who may be present at questioning and the right to a defence attorney at no cost in such cases as provided by this Code.”

Article 420

Apprehension of an Alien

“(1) In urgent cases, when there is a danger that the alien will escape or go in hiding, and a foreign state has requested temporary detention of the alien, the competent police authority may apprehend the alien for the purpose of taking him to the preliminary proceedings judge on the basis of the request by the competent foreign authority, regardless of how the request has been forwarded. The request should indicate data for the verification of the identity of the alien, nature and name of the criminal offence, number of decision, date, place and name of the foreign authority that has requested detention and a statement that the extradition will be requested through regular channels.

“(2) Once detention has been decided on, in line with the provision of Paragraph 1 of Article 418 of this Code and once the alien has been taken to the preliminary proceedings judge, the preliminary proceedings judge shall, upon questioning of the alien, inform the competent Ministry of Bosnia and Herzegovina about detention.

“(3) The preliminary proceedings judge shall release the alien once the reasons for detention cease to exist or if the request for extradition is not submitted within the deadline he has determined, taking into account the distance of the state requesting the extradition, and for which the deadline cannot be longer than three (3) months from the day of the detention of the alien. The foreign state shall be informed about this deadline. Upon request by the foreign state, the Panel referred to in Article 24 Paragraph 6 of this Code may extend this deadline in justified cases, but by a maximum of three (3) additional months.

“(4) When the request as stipulated has been submitted within a specified deadline, the preliminary proceedings judge shall act in line with Article 419 of this Code.”

Article 421

Investigative Actions

“(1) When the preliminary proceedings judge has heard the Prosecutor and defence attorney, he shall also, as appropriate, carry out other investigative actions in order to establish if the conditions have been met to extradite the alien or to surrender the objects on which or by way of which the criminal offence has been committed, if these objects have been seized from the alien.

“(2) Upon execution of investigative actions, the preliminary proceedings judge shall deliver the files on the investigation, along with his opinion, to the Panel (Article 24, Paragraph 6).

“(3) If criminal proceedings against the alien whose extradition has been requested are underway before a domestic Court due to the same or other criminal offence, the preliminary proceedings judge shall indicate that in the files.”

Article 422

Decision Rejecting Extradition

“(1) If the Panel (Article 24, Paragraph 6) has found that the legal requirements for extradition have not been fulfilled, it shall issue a decision that the request for extradition has been rejected. This decision shall be forwarded to the Appellate Division Panel, which shall, upon having heard the Prosecutor, confirm, revoke or alter the decision.

“(2) If the alien is in detention, the Panel may decide that the alien shall remain in detention until the decision rejecting the extradition becomes legally binding.

“(3) The legally binding decision rejecting the extradition shall be delivered through the competent Ministry of Bosnia and Herzegovina to the foreign state.

“(4) If the extradition is rejected due to the reasons referred to in Item a) and b) of Paragraph 1 of Article 415 of this Code, the decision rejecting the extradition shall also, together with all available documentation and without delay, be forwarded to the competent Prosecutor’s Office in Bosnia and Herzegovina for institution of the criminal proceedings.

Article 423

Decision Establishing Legal Requirements for Extradition

If the Panel (Article 24, Paragraph 6) has found that legal requirements for the extradition of the alien have been fulfilled, it shall confirm that by way of a decision. The alien shall have the right to appeal such a decision to the Appellate Division Panel.

Article 424

Delivery of the Decision on Extradition

If the Appellate Division Panel, when considering the appeal, has found that legal requirements for the extradition of the alien have been fulfilled or if such a decision as issued by the Panel (Article 24, Paragraph 6) has not been appealed, the case shall be delivered to the competent Ministry of Bosnia and Herzegovina, which shall decide on the extradition.

Article 425

Authorisation, Refusal and Postponement of the Extradition

“(1) The Minister of the competent Ministry of Bosnia and Herzegovina shall issue a decision either authorising or not authorising the extradition. The minister may issue a decision to postpone the extradition because criminal proceedings before a domestic Court are underway against the alien whose extradition has been requested due to another criminal offence or because the alien is serving a sentence in Bosnia and Herzegovina.

“(2) The Minister of the competent Ministry of Bosnia and Herzegovina may refuse the extradition if criminal offences for which the domestic law has foreseen a prison sentence of up to three (3) years are in question, or if a foreign court has imposed a custodial sentence of up to one (1) year.

Article 426

The Contents of the Decision on Extradition

“(1) The decision authorising the extradition of the alien shall mention the following:

- (a) that he cannot be prosecuted for another criminal offence committed prior to the extradition;
- (b) that he cannot be subjected to the enforcement of a sentence for another criminal offence committed prior to the extradition;
- (c) that a sentence more severe than the sentence he has been convicted to cannot be applied to him;
- (d) that he cannot be extradited to a third country for prosecution for a criminal offence committed prior to the extradition being authorised.

“(2) Apart from the reasons referred to in Paragraph 1 of this Article, other conditions for extradition may be also put forward in the decision.

D. Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 50/01 and 27/02)¹

33. Chapter XVII, concerning measures to guarantee the presence of the accused provides, insofar as is relevant, provides as follows:

Article 183

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

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

...”

Article 188

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

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

...

34. Chapter XXXI, concerning the procedure on extraditing persons charged or convicted and the procedure detaining individuals with a view to extradition, insofar as is relevant, provides as follows:

Article 506(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.”

Article 509

“(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.

...

“(3) If the petition meets the conditions enumerated in Article 508 of this law, the investigative judge shall issue an order that the foreign national be taken into custody if there are the grounds referred to in Article 183 of this law or shall take other steps to ensure his presence, unless it is obvious from the petition itself that there is not sufficient cause for extradition.

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

“...”

Article 510(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 foreign national, the competent law enforcement agency may arrest the foreigner 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.”

E. Agreement on Extradition between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany of 26 November 1970 (Official Gazette (addendum) of the Socialist Federal Republic of Yugoslavia no. 17/76, which entered into force on 14 November 1975), taken over by Bosnia and Herzegovina

35. Article 16 of the Agreement, insofar as is relevant, provides:

“(1) Requests are composed in written form.

“(2) Following attachments will be attached to the request:

(a) original or verified copy of the order for arrest or some other document with the same legal effect, composed in accordance with the legal provisions of the state which requests extradition, or enforceable verdict finding a person guilty.

.....”

36. Article 18 of the Agreement provides:

Temporary Detention for Extradition

“(1) In urgent cases the judicial authorities of the State requesting extradition may apply for temporary detention of the person sought. The competent authority of the State from which extradition is requested shall decide upon this request in accordance with its own law.

“(2) The request for temporary detention shall include a statement that one of the documents mentioned in Article 16, paragraph 2 a exists and that the intention exists to issue a formal extradition request; in addition the request shall name the crime for which extradition will be sought, the potential sentence for the crime or the sentence to be executed, time and place of the crime, and, in so far as possible, a description of the person sought.

“(3) Irrespective of the diplomatic channels the request for temporary detention for extradition shall be sent to the competent authority of the State from which extradition is requested by ordinary mail or telegraph or via Interpol. The authority of the State requesting extradition shall immediately be informed what actions have been taken following its request.

“(4) Temporary detention for extradition can be ended if the formal extradition request for extradition or the documents mentioned in Article 16 are not presented to the State from which extradition is requested within 30 days; in no case the detention shall exceed 45 days. An early release is possible at any time, if the State from which the extradition is requested takes all measures that it deems necessary to hinder the flight of the person sought.

“(5) The release does not hinder a new detention or extradition, if the formal request for extradition is received late.”

37. Article 20 of the Agreement provides:

Preparation of the extradition

“After receiving the extradition request, the state from which extradition is sought takes all necessary measures to carry out the extradition proceedings, unless the extradition seems illegal from the outset. If necessary, the person sought after is to be taken into detention, in particular if it must be feared that he will abscond from the extradition proceedings or the execution of the extradition.”

Explanatory note to Article 20

“Article 20 does not in itself contain a reason upon which arrest and detention can be based. Arrest and detention therefore must be based on the law of the state in which the arrest and detention takes place.”

V. COMPLAINTS

38. The applicant complains that he has never been produced before the Court of BiH in order to challenge the lawfulness of his detention and to submit arguments against his extradition and contest the evidence presented by the prosecution. He complains that the documentation, on the basis of which his detention and the extradition proceedings were initiated, has never been communicated to him or his legal representative. He further complains that the duration of his detention was not specified, even though the applicable law prescribes time limits as to days and months.

39. Specifically, the applicant considers that his right to freedom and security of person, as guaranteed under Article 5(1) of the Convention, the principle of equality of arms, the right to present a defence and to be heard in an oral hearing, as well as his general right to fair trial, as guaranteed under Articles 6(1) and 6(3) of the Convention, have been violated.

40. The applicant requests to be released from detention and for the Chamber to order the renewal of proceedings in accordance with law with full respect for his defence rights. The applicant further seeks compensation for pecuniary damage in the amount of 20,000 Convertible Marks (*Konvertibilnih Maraka*, “KM”), compensation for non-pecuniary damage in the amount of 30,000 KM and compensation for legal costs and expenses incurred in the amount of 3,000 KM.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

41. The respondent Party does not contest the admissibility of the application.

42. As to the merits of the application, the respondent Party disputes the allegation that the Court of Bosnia and Herzegovina is not competent to conduct extradition proceedings, stating that Articles 414 to 431, in conjunction with Articles 23 and 449 of the BiH Code of Criminal Procedure, confer competent jurisdiction on the Court of BiH to conduct extradition proceedings. As to the allegation that no formal request for extradition was submitted by the Federal Republic of Germany, the respondent Party points out that it is indisputable that the request for extradition was delivered through the correct diplomatic and legal channels and complied with the requirements of Article 416 of the BiH Code of Criminal Procedure. The respondent Party further disputes that no appeal against the extradition was permitted, relying on the same provision.

43. As to the allegation that the Court of BiH did not state reasons for determining detention, the respondent Party states that this is also incorrect, as the grounds were set out in the procedural decisions on detention. Additionally, the respondent Party points out that the time limit for detaining the applicant did not expire according to Article 422(2) of the BiH Code of Criminal Procedure.

44. As to the allegation that the applicant was deprived of the right to defence, due to the fact that neither the verbal note nor the formal request for extradition were given to him, the respondent Party disputes this, arguing that the applicant was appointed *ex officio* defence counsel who used all legal means by which to protect the applicant's rights. Additionally, the respondent Party points out

that the applicant's defence counsel was provided with the minutes of the hearings as well as all relevant documents pertaining to the extradition proceedings.

45. The respondent Party declares that all preconditions were complied with in the present case as provided under Article 415 of the BiH Code of Criminal Procedure and therefore the facts as presented by the applicant are incorrect.

46. To sum up, the respondent Party repeats that the Court of BiH conducted the extradition proceedings strictly in accordance with the law and the applicant's defence rights were respected throughout the duration of the proceedings. Accordingly, there has been no violation of the applicant's rights as provided under the Convention. The respondent Party therefore proposes to the Chamber to find no violation as the applicant's complaints are ill-founded.

B. The applicant

47. The applicant maintains his complaints.

48. The applicant complains that his detention was ordered without a time limit, even though the law provides such time limits, thereby in violation of Article 5(3) of the Convention. The court established that all legal and factual conditions were obtained to order the applicant's detention. However, in this respect, the applicant was never given the opportunity to be heard or to challenge the evidence presented in an oral hearing. He further complains that he was never provided with all relevant documentation on which his requested extradition is based.

49. The applicant complains that the request for his extradition was not delivered through diplomatic channels as prescribed by law. He complains that he has never been provided with the *note verbale* of 24 April 2003 and disputes its existence. Accordingly, he complains that the authorities did not have an official request from the Federal Republic of Germany for extradition when establishing whether all legal conditions were met. As to the request for extradition, the applicant submits that the law clearly states that this must be communicated through diplomatic channels and must include all the relevant documentation provided under Article 416 of the State Code of Criminal Procedure (see paragraph 32 above). If a request does not conform to the formal requirements, it may only be of a temporary nature until such time as a formal request is transmitted. However, from the procedural decisions issued by the Court of Bosnia and Herzegovina, it is apparent that the extradition proceedings were initiated by the *note verbale* of 24 April 2003. Moreover, neither the *note verbale* nor the subsequent formal request of 15 May 2003 were communicated to the applicant or his legal representative. He further maintains that there was no practical possibility to appeal against the decision on his extradition to the Federal Republic of Germany and the request was not submitted in accordance with Article 416 of the State Code of Criminal Procedure.

50. The applicant complains that his detention is arbitrary due to the uncertainty of the period in which he can be detained pending extradition. In this respect, he complains that the present law does not permit him to complain as to the length or grounds of his detention.

51. The applicant complains that his basic defence rights have been violated in breach of Articles 5 and 6 of the Convention and Articles 419 and 420 of the BiH Code of Criminal Procedure. He complains in this respect that the principle of equality of arms and the right to present a defence were not respected. Under Articles 419 and 420 he had the right to examine the evidence against him, to give a defence statement and to be examined by the court. However, the applicant states that since his arrest on 2 April 2003 he has only been heard on two occasions. The first occasion was when he was produced before the investigative judge of the Cantonal Court in Mostar on the day of his arrest, when he was informed that he would be detained for a period of 30 days on the basis that he had attempted to evade the authorities. He was later brought before the Cantonal Court in Mostar on 16 April 2003. He complains that during the entirety of the extradition proceedings before the Court of Bosnia and Herzegovina, he has never been brought before the court, provided with minutes of the hearings or had the opportunity to examine the evidence against him.

52. Finally, the applicant states that due to the violations of his rights in the present case and due to the fact that the court has violated fundamental provisions of the BiH Code of Criminal Procedure, it cannot be established that all legal requirements for extraditing him have been met. If the rules of procedure have not been respected, then one cannot safely determine legal conditions. Accordingly, the entire proceedings before the Court of Bosnia and Herzegovina have been conducted in violation of the Convention.

VII. OPINION OF THE CHAMBER

A. Admissibility

53. Before considering the merits of the applications, the Chamber must first decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application it considers incompatible with the Agreement, manifestly ill-founded or an abuse of the right to petition.

1. Article 5(3) of the Convention

54. The applicant complains that he was not brought promptly before a judge during the proceedings before the Court of Bosnia and Herzegovina in violation of the first limb of Article 5(3) of the Convention.

55. Article 5(3) of the Convention, insofar as relevant, provides as follows:

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

56. The Chamber recalls that the protection under Article 5(3) of the Convention relates exclusively to individuals detained in accordance with the provisions of paragraph (1)(c) of Article 5 (see e.g. Eur. Court HR, *Quinn v. France*, judgment of 22 March 1995, Series A no.311, paragraph 53 and Eur. Court HR, *De Wilde, Ooms and Versyp (“Vagrancy”)*, judgment of 18 June 1971, Series A. no.12, paragraph 71) and does not apply to detention with a view to extradition within the meaning of Article 5(1)(f) of the Convention. The purpose of the protection under Article 5(3) is to afford individuals deprived of their liberty and held in detention on remand a special guarantee: a procedure of judicial nature designed to ensure that no one should be arbitrarily deprived of his liberty (see e.g. Eur. Court HR, *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, paragraph 30). The applicant was detained as a “person against whom action is being taken with a view to deportation or extradition” under Article 5(1)(f) and therefore the additional guarantees afforded under Article 5(3) of the Convention are not applicable. It follows that the application in this respect is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible.

2. Article 6 of the Convention

57. The applicant complains to the Chamber that the extradition proceedings before the Court of BiH were in violation of Article 6 of the Convention. Specifically, the applicant complains that the right of access to court, the principle of equality of arms, the right to be present and participate effectively in proceedings and the minimum rights of the defence in criminal proceedings have been violated in the present case. However, the Chamber recalls that in order to engage the protection of the rights enshrined under Article 6 of the Convention, the proceedings must concern the determination of civil rights or obligations, or of a criminal charge. The European Court has stated in *Maaouia* (Eur. Court HR, *Maaouia v. France*, judgment of 5 October 2000, Reports of Judgments and Decisions 2000-X, paragraphs 38-41) and reaffirmed in *Mamatkulov and Abdurasulovic* (Eur. Court HR, *Mamatkulov and Abdurasulovic v. Turkey*, judgment on the merits of 6 February 2003, paragraphs 80-81) that decisions regarding the entry, stay, deportation and extradition of aliens do not concern the determination of an applicant’s “civil rights or obligations” or of “a criminal charge against him”,

within the meaning of Article 6(1) of the Convention. Accordingly, the Chamber finds that Article 6 of the Convention is not applicable in the present case. It follows that the application in this respect is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare this part of the application inadmissible.

3. Conclusion as to admissibility

58. As the respondent Party has not objected to the admissibility of the applications on any grounds, and the Chamber finds that no other ground for declaring the application inadmissible has been established, the Chamber declares the application admissible under Articles 5(1)(f) and 5(4) of the Convention as directed against Bosnia and Herzegovina.

B. Merits

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

1. Article 5(1) of the Convention

60. The Chamber finds that the application raises issues with regard to Article 5 paragraph 1 of the Convention, which reads in the relevant part as follows:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(f) the lawful arrest or detention of a person to prevent his unlawful entry into the country or a person against whom action is being taken with a view to deportation or extradition”.

61. In determining the lawfulness of detention under Article 5(1) of the Convention, the Chamber must first examine whether domestic legal provisions were followed and whether such provisions are compatible with the Convention. The Chamber recalls that Article 5(1)(f) of the Convention permits the authorities to proceed to arrest and detain an alien pending a decision on his admission, deportation or extradition. In this respect, Article 5(1)(f) is narrowly construed and the pre-conditions for temporary detention include that the individual in question must fall within one of the categories mentioned in paragraph (1)(f), the basis for ordering detention must be lawful, and any procedure prescribed by domestic law strictly followed. However, the ‘necessity’ of ordering detention under Article 5(1)(f) is wider than under Article 5(1)(c) and it is only necessary that action is being taken with a view to deportation or extradition. It is therefore immaterial whether the underlying decision to expel or extradite can be justified under national or Convention law (see e.g. Eur. Court HR, *Chahal v. United Kingdom*, judgment of 15 November 1996, Reports 1996-V, paragraph 112). It is further immaterial whether the individual in question is in fact extradited as the lawfulness of detention must be distinguished from the lawfulness of the extradition itself, provided that the procedure is being seriously pursued (see e.g. Eur. Commission HR, *Caprino v. United Kingdom*, application no. 6871/75, decision on admissibility, Yearbook XXI (1978) p.284 at p.294). Accordingly, the first point of reference when determining whether detention pending extradition is in accordance with law is to consider the provisions contained in the applicable domestic law.

62. Because the applicant and the respondent Party disagree on the organs competent to deal with the applicant’s case and the procedure, the Chamber finds it useful to first establish the procedure that should be followed, according to the applicable legal provisions, before scrutinising the alleged acts and omissions of the respondent Party’s authorities and then examine the procedure that was in fact adopted in the present case.

a. Procedure for detaining individuals pending extradition

i. Interpol Red Notice Arrest Warrant

63. The legal basis for a red notice is the arrest warrant issued against an individual wanted for prosecution. The notice contains identification information about the individual such as physical description, photographs and fingerprints if available, occupation, languages spoken and identity documents. The notice may also contain judicial information such as the offence with which the person is charged, references to the relevant laws under which the charge is made, the maximum penalty that has been or can be imposed, the references of the arrest or of the sentence imposed by the court, and details of the countries from which the requesting country will seek the fugitive's extradition. Many of Interpol's member countries consider a red notice as a valid request for provisional arrest. This is particularly true if the requesting country and requested country have a bilateral or multilateral extradition treaty or convention in force with each other. It is even more so if the treaty or convention allows for the use of Interpol channels to forward such requests. If a red notice is considered to be a valid request for a provisional arrest, the appropriate judicial authority in the requested country can make the decision, based on the information in the notice, to have the person provisionally arrested. Subsequent to the arrest, the requesting country is notified of the person's detention and the formal extradition process can begin.

64. The Chamber notes that the Extradition Agreement taken over by Bosnia and Herzegovina as well as the Interpol Agreement between Bosnia and Herzegovina and the Federal Republic of Germany signify that the red notice is considered as a valid request for provisional arrest.

ii. Competence of the Court of BiH in extradition matters

65. The Chamber notes that on 2 April 2003, the date on which the applicant was arrested, both the Court of BiH and the Cantonal Court in Mostar had *prima facie* jurisdiction to hear extradition proceedings. Articles 414 to 416 of the BiH Code of Criminal Procedure governed extradition proceedings before the Court of BiH and Articles 506 to 510 of the Federation Code of Criminal Procedure governed extradition proceedings before the Cantonal Courts.

66. In determining which court an individual should be brought before in connection with extradition proceedings, the Chamber notes that under Article 506(1) of the Federation Code of Criminal Procedure it is stated that extradition proceedings shall be conducted in accordance with the provisions of this law "unless the law of Bosnia and Herzegovina or an international treaty specifies otherwise". Accordingly, in this respect, the Federation Code of Criminal Procedure specifically provides for the enactment of State legislation whilst the Federation law remains in force and that the State law shall take precedence over the Federation law. Furthermore, Article III.1(1)(g) of the Constitution of Bosnia and Herzegovina states that international criminal law enforcement, including relations with Interpol, falls within the responsibilities of the State institutions. Moreover, under Article 1(2) of the Constitution of the Federation of Bosnia and Herzegovina it is stated that the Federation shall have competence and responsibilities of matters that are *not* within, according to the Constitution of Bosnia and Herzegovina, the exclusive competence of the State institutions.

67. Furthermore, on 1 February 2003 the High Representative issued the Decision Enacting the Law re-amending the Law on the Court of Bosnia and Herzegovina, which states under Article 2(3)(b), amending Article 13 of the Law, that the Court of BiH shall be competent to decide any issue relating to international criminal law enforcement, including relations with Interpol and to consider the extradition of persons requested by a foreign state. The Chamber also notes that on 1 August 2003 the new Federation Code of Criminal Procedure entered into force, which does not contain any provisions on extradition proceedings, thereby acknowledging the fact that the Court of BiH now has exclusive jurisdiction in such matters.

68. Accordingly, as the applicant was apprehended and detained under temporary measures as a person against whom action is being taken with a view to extradition by members of the State Border Service, an organ of Bosnia and Herzegovina, he was at the moment he was arrested within the control of authorities of the respondent Party. As mentioned above, the Court of BiH had unique

jurisdiction to examine extradition requests from foreign States and to determine the legal grounds for detaining an individual pending extradition.

iii. Applicable legal provisions governing detention pending extradition

69. Upon the entering into force of the BiH Code of Criminal Procedure, on 1 March 2003, anyone arrested on the basis of an extradition request shall be detained in accordance with that law. The Chamber has further established that an Interpol Red Notice arrest warrant notice is considered to be a valid request for a provisional arrest, and that the appropriate judicial authority, in this case the Court of BiH, can make the decision, based on the information in the notice, to have the person provisionally arrested and detained. At this stage, the authorities must inform the requesting country, in this case the Federal Republic of Germany, that the individual in question has been placed under arrest and is being held in detention pending his extradition. The requesting country should submit a formal request for extradition, including all documentation referred to under Articles 415 and 416 of the BiH Code of Criminal Procedure. During this period between arrest and a formal request being submitted, the individual may be placed in “temporary detention” and the authorities conducting the extradition proceedings may determine whether legal and factual conditions are met for extradition.

70. Article 414(1) of the BiH Code of Criminal Procedure states that extradition proceedings “shall be carried out under the provisions of this Code, unless otherwise determined by the legislation of Bosnia and Herzegovina or an international agreement”. The Chamber recalls that the Agreement on Extradition between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany was adopted by Bosnia and Herzegovina. Under Article 18(1) of the Agreement on Extradition it is stated that, in urgent cases, a request may be submitted by the requesting country for temporary detention of the person sought. However, the same provision states that the competent authority shall decide upon detention in accordance with its own law.

71. The Chamber has already established that the Interpol Red Notice is considered to be a valid request for a provisional arrest and therefore, the requirement contained in the first limb of Article 18(1) is met. Further, Article 18(2) provides for requests for temporary detention to be transmitted through Interpol, thus covering this eventuality. However, the same provision also states that the authorities of the requesting country shall be informed “immediately” of what steps have been taken following its request. Article 18(4) further provides that temporary detention “may” also be terminated if a formal request for extradition is not submitted within 30 days of arrest, but under no circumstances shall temporary detention exceed 45 days. The Chamber notes that the term “temporary detention” is not defined under the Agreement on Extradition, but takes this to mean the period from arrest until receipt of a formal request for extradition from the requesting country, at which stage the court can examine on the merits whether legal conditions for extradition are met.

72. Article 20 provides that once a request for extradition is received, the authorities are required to take necessary measures to carry out the extradition proceedings. If necessary, the authorities can detain the individual pending extradition on the basis that there is a fear that he will abscond. However, the explanatory note to Article 20 states that this does not in itself constitute a reason upon which arrest and detention can be based, as arrest and detention must be in accordance with domestic law.

73. Turning to the domestic law, the Chamber notes that Article 418(1) of the BiH Code of Criminal Procedure provides that detention may be imposed if the proceedings are being conducted in accordance with Article 416 (see paragraph 32 above) if there are reasons for detention referred to in Article 132 (see paragraph 31 above). In this respect, the Chamber notes that the risk of absconding is specifically mentioned under that provision. Under Article 420(1), it is stated that, in urgent cases, where there is a risk that the suspected person will escape, and a foreign state has requested temporary detention, the competent police may apprehend him for the purpose of bringing him before the preliminary proceedings judge at the Court of BiH. Under Article 420(2), once the suspect is brought before the preliminary proceedings judge and informed of the reasons for his arrest and detention, the preliminary proceedings judge shall inform the competent BiH Ministry concerning the detention. Under Article 420(3) it is stated that detention shall be terminated if the

reasons for ordering detention cease to exist, no formal request for extradition has been submitted within the time limit established by the preliminary proceedings judge or detention pending receipt of the extradition request has exceeded the maximum period of 3 months. However, Article 414(1) states that extradition shall be carried out under the provisions of the Code of Criminal Procedure unless otherwise determined by an international agreement. In this regard, the Chamber has already established that the Agreement on Extradition was the applicable law and the maximum length of temporary detention is 45 days, as determined by Article 18(4) of the Agreement on Extradition, irrespective of the period set by Article 420(3) of the BiH Code of Criminal Procedure.

iv. Detention subsequent to receipt of a formal request for extradition

74. Under both the Agreement on Extradition and the BiH Code of Criminal Procedure there is no strict time limit for detaining an individual once a formal request for extradition has been submitted in accordance with the procedure set out above. Under Article 20 of the Agreement on Extradition, after receiving the extradition request, detention may be ordered if there is a fear that the individual will attempt to escape.

v. Conclusion as to the procedure for detaining the applicant pending extradition

75. In sum, the Chamber notes that according to the relevant domestic legal provisions, the arrest and detention of the applicant should have been conducted in the following manner. Upon his arrest on 2 April 2003 by members of the State Border Service on the basis of an Interpol arrest warrant, the applicant should have been promptly brought before the preliminary proceedings judge at the Court of BiH and informed of the reasons for his arrest. The preliminary proceedings judge should then have determined whether there are grounds for detaining the applicant within the meaning of Article 132 of the BiH Code of Criminal Procedure (see paragraph 31 above). Once an order for detention has been issued, and after the preliminary proceedings judge has examined the applicant, the competent BiH Ministry should have been informed of the applicant's detention. The competent BiH Ministry must then inform the competent authorities of the Federal Republic of Germany of the applicant's arrest and detention. The Federal Republic of Germany should have then been requested to state whether the applicant's extradition was sought, and if so, to submit a formal request within a certain time period as stipulated by the preliminary proceedings judge, submitting all relevant documentation pertaining to the extradition as defined under Articles 415 and 416 of the BiH Code of Criminal Procedure (see paragraph 32 above). After the passage of the 30-day limit as stipulated under Article 18(4) of the Extradition Agreement, in the absence of a formal request, the Court of BiH could have exercised its discretion to release the applicant, but after the passage of the 45-day time limit, in the absence of a formal request, it was obliged to release the applicant. Once the Court of BiH had received all relevant documentation the applicant could be detained, provided objectively assessed grounds existed, until such time as the extradition proceedings had been concluded and as long as the domestic authorities exercise special diligence and the length of the extradition proceedings did not exceed a reasonable time. In this respect, the Chamber notes that although the reasonable time requirement under Article 5(3) of the Convention does not apply to individuals detained in accordance with Article 5(1)(f) of the Convention, the European Court has imported the "due diligence" requirement into Article 5(1)(f) in order to determine lawfulness of detention pending extradition (see e.g., Eur. Court HR, *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, paragraph 19).

b. Procedure adopted in the present case

76. On 2 April 2003 the applicant was arrested by members of the State Border Service and brought before the investigative judge of the Cantonal Court in Mostar who ordered the applicant's detention on the basis that he had attempted to evade the authorities at the border crossing and attempted to abscond. On 15 April 2003 the investigative judge received, by facsimile transmission, the Interpol arrest warrant and supporting documentation on the applicant's identity. On 16 April 2003 the applicant was again brought before the investigative judge whereupon he was informed that he would be held in temporary detention pending extradition on the basis of the Interpol arrest warrant for a period of 45 days. On 24 April 2003 the Federal Republic of Germany, requesting the

extradition of the applicant, communicated a *note verbale* to the organs of the respondent Party. On 28 April 2003, a panel of judges of the Cantonal Court in Mostar extended the applicant's detention for a further period of 2 months. On 15 May 2003, the Federal Republic of Germany, requesting the extradition of the applicant, communicated a formal written request, containing all relevant documentation, to the organs of the respondent Party.

77. On 16 May 2003 the Court of BiH issued a procedural decision by which the applicant's detention was extended pending his extradition. In the procedural decision it was stated that the applicant would be detained until such time as the extradition proceedings had been concluded. On 19 May 2003 the Court of BiH issued a procedural decision establishing that all legal requirements for extraditing the applicant had been met. On 27 May 2003, the Appellate Panel of the Court of Bosnia and Herzegovina issued a procedural decision rejecting the applicant's appeal against the procedural decision of 19 May 2003 as ill-founded.

78. On 30 May 2003 the Minister of Justice issued a procedural decision authorising the applicant's extradition and on 12 June 2003 the applicant was extradited to the Federal Republic of Germany.

79. It is not in dispute that the applicant was never brought before the Court of BiH, as required by law.

c. Assessment under Article 5(1)(f) of the Convention

i. Lawfulness of detention until 16 May 2003

80. The Chamber notes firstly that the State Border Service brought the applicant before the Cantonal Court and not the Court of BiH, as required by law.

81. Secondly, once the applicant was arrested and brought promptly before the court, albeit the wrong court, the competent Ministry of Justice should have been informed of his arrest who in turn should have informed the competent authorities of the Federal Republic of Germany in order to ascertain whether the applicant's extradition was sought. The respondent Party has failed to establish at what stage in the proceedings, if at all, this occurred. The Chamber notes that the investigative judge of the Cantonal Court received a facsimile transmission concerning the Interpol arrest warrant and supporting documentation concerning the applicant's identity and the offences with which he was charged on 15 April 2003. However, this transmission was not submitted by the Federal Republic of Germany, but by Interpol. According to the submissions of the respondent Party, the first contact it held with the authorities of the Federal Republic of Germany was when it received the *note verbale* on 24 April 2003.

82. As to the overall length of detention pending receipt of the extradition request, the Chamber notes that according to Article 18(4) of the Agreement on Extradition the court may terminate detention if a formal request for extradition is not received within 30 days, but it is under no obligation to do so. However, it must terminate detention if it is not received within 45 days. This period is counted from the moment an individual is arrested and placed in detention and not, as the respondent Party submits, when he is actually informed that the extradition process has been initiated. Accordingly, the period under consideration in the present case is from 2 April 2003 until 15 May 2003, when the formal request was in fact transmitted by the Federal Republic of Germany, thereby totalling 44 days. Accordingly, in this respect, the Court of BiH respected the time limit imposed by Article 18(4) of the Agreement on Extradition.

ii. Lawfulness of detention since 16 May 2003, and length thereof

83. Subsequent to the receipt of the formal request for extradition on 15 May 2003, the Court of BiH ordered the applicant's detention pending the conclusion of his extradition "in accordance with Article 422(2) of the BiH Code of Criminal Proceedings". However, the Chamber notes that Article 422(2) does not state this, but permits the authorities to detain individuals once a decision has been issued rejecting the request for extradition until such time as the decision becomes valid.

84. The Chamber further notes that according to Article 419 of the BiH Code of Criminal Procedure the applicant should have been brought before the Prosecutor and given an opportunity to state his defence. Thereafter, according to Article 420(2) the applicant should have been brought before the preliminary proceedings judge. The respondent Party therefore failed to respect the minimum requirements set by the BiH Code of Criminal Procedure for imposing detention pending extradition.

85. In addition to the above-mentioned, the Chamber further considers that the failure by the respondent Party to provide the Chamber with a copy of the *note verbale* of 24 April 2003 or the formal request for extradition of 15 May 2003 or to provide evidence supporting its claim that the applicant was provided with the same leads the Chamber to doubt the existence of such documentation. Accordingly, by failing to satisfy the minimum procedural requirements of the BiH Code of Criminal Procedure, in various respects, the applicant's detention was not in accordance with a procedure prescribed by domestic law.

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

86. In light of the above-mentioned considerations, the Chamber finds that the applicant's detention was not in accordance with a procedure prescribed by law in violation of Article 5(1)(f) of the Convention by failing to respect the provisions of domestic law on extradition.

2. Article 5(4) of the Convention

87. The applicant complains that he was not able to challenge the lawfulness of his detention, that he was not provided with any documentation in the possession of the prosecution concerning the extradition proceedings and that he had no effective opportunity to apply directly to the Court of BiH and that no hearings were scheduled before that Court.

88. Article 5(4) of the Convention provides:

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

89. The respondent Party does not dispute that the applicant was never brought before the Court of BiH. However, the respondent Party states that the applicant's detention was at all times in accordance with law and the applicant was appointed *ex officio* defence counsel who used all legal means by which to protect the applicant's rights. The respondent Party has not commented on how the applicant was permitted to challenge the lawfulness of his detention in accordance with Article 5(4) of the Convention.

90. The Chamber finds that the applicant's complaints concern three matters under Article 5(4):

- i. effective examination of requests for release;
- ii. direct access to a court; and
- iii. disclosure of documentation.

a. The right of *habeas corpus* in extradition proceedings

91. The Chamber recalls that the right of *habeas corpus*, the right to judicial review of the lawfulness of detention, entitles a detained person to take proceedings by which the lawfulness of his detention is decided "speedily" by a court and his release ordered if his detention is not lawful (see, e.g., case no. CH/02/12427 *Dominik Ilijašević*, decision on admissibility and merits of 8 October 2003, paragraph 143, Decisions July – December 2003). The European Court of Human Rights has explained that the requirement that lawfulness of detention be decided "by a court" implies that the procedural guarantees that have been established through the jurisprudence on Articles 5 and 6 of the Convention defining a "court", such as independence, impartiality and the

power to give a legally binding decision, apply equally for the purposes of Article 5(4). Additionally, the principle of equality of arms and right of access to court that have been inferred into Article 6 of the Convention, also applies to Article 5(4), and the procedure adopted must ensure equal fair treatment and be truly adversarial (see, e.g., Eur. Court HR, *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, paragraph 84). In this respect, the lack of adversarial proceedings, including the lack of access to documents essential to the detained person, will amount to a violation of Article 5(4). Additionally, the fact that the detained person is not permitted to be present at the same time as the prosecution may violate the principle of equality of arms and therefore be in breach of Article 5(4) (see, e.g., Eur. Court HR, *Kampanis*, Series A no.318, pp. 46-48). The detained person must be given an opportunity to challenge submissions of the prosecution (see, e.g., Eur. Court HR, *Lamy v. Belgium*, judgment of 30 March 1989, Series A no.151, paragraph 29) and be given an adequate opportunity to prepare an application for release (see, e.g., Eur. Commission HR, *Farmakopoulos v. Belgium*, application no. 11683/85, decision of 4 December 1990). Article 5(4) generally requires that a detained person or his legal representative be entitled to participate in an oral hearing in order to maintain the fundamental guarantees against arbitrariness (see, e.g., Eur. Court HR, *Keus v. Netherlands*, judgment of 25 October 1990, Series A no.185-C, paragraph 27). Moreover, in *Ilijašević* (see the above-mentioned *Ilijašević* decision, paragraphs 144-147, citing Eur. Court HR, *Niedbala v. Poland*, judgment on the merits of 4 July 2000, paragraphs 66-67), the Chamber noted that a procedure that did not permit a detained person, or his legal representative, to attend court session, or did not require that the prosecutor's submissions in support of detention be communicated directly either to the applicant or to his lawyer, is not consonant with the principle of equality of arms and thereby not truly adversarial as required by Article 5(4) of the Convention.

92. As regards extradition proceedings, the Chamber notes that the requirements under Article 5(4) of the Convention are less strictly applied, as extradition, by its very nature, involves a State's international relations. The case law of the European Court (see e.g., Eur. Court HR, *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no.107) has allowed a wider margin of appreciation in the manner of the application of Article 5(4) where issues arise relating to extradition, as long as the essence of the safeguard is left intact. However, in this respect, the lack of any contact with the court may be incompatible with the very nature of the right of *habeas corpus*. Therefore, if an individual has little or no access to the court, is not provided with relevant documentation pertaining to his extradition or, even if provided with such documentation, not given an adequate opportunity to reply, the procedure is unbalanced and does not satisfy the minimum adversarial element of Article 5(4) (see the above-mentioned *Sanchez-Reisse v. Switzerland* decision, paragraph 50). Furthermore, in *Sanchez-Reisse* the European Court stated that it is essential that an individual should have access to a court and the opportunity to be heard either in person or, where necessary, through "some form of representation", failing which he will not have been afforded "the fundamental guarantees of procedure applied in matters of deprivation of liberty". Accordingly, Article 5(4) prescribes a requirement that an individual detained pending extradition must have access to court in order to challenge the lawfulness of his detention, and sufficient access to documents necessary to prepare an application for his release.

b. Procedure in the present case

93. The Chamber notes that the BiH Code of Criminal Procedure provides that under Article 418(1) (see paragraph 32 above) detention may be ordered by the preliminary proceedings judge if the request for detention corresponds to Article 416 (see paragraph 32 above) and if there are reasons for detention referred to in Article 132 (see paragraph 31 above). Once detention has been determined under Article 418(1) and once the individual has been brought before and questioned by the preliminary proceedings judge, the competent BiH Ministry, in this case the Ministry of Justice, shall be informed of detention and the extradition process may begin. Under Article 419(1), the Prosecutor "shall without delay communicate to the alien why and on grounds of which evidence his extradition has been requested, and shall call on him to state whatever he has in his defence. Minutes shall be made on the questioning and defence of the alien." Under Article 419(2), the Prosecutor "shall instruct the alien of his right to retain a defence attorney of his choice who may be present at questioning and the right to a defence attorney at no cost in such cases as provided by this Code".

94. For the period from the applicant's arrest until the issuance of the procedural decision, the applicant's detention was ordered by the Cantonal Court. He was brought before that court on 2 April 2003, when his detention was ordered, and on 16 April 2003, when he was informed of the Interpol arrest warrant. The applicant's detention was extended by the Cantonal Court on 24 April 2003, but on this occasion, the applicant not brought before the court.

95. On 16 May 2003, the Court of BiH ordered the applicant's detention on the basis of Article 132(1)(a), 418 and 420 in conjunction with Article 416 of the BiH Code of Criminal Procedure (see paragraphs 31 to 32 above), until such time as the extradition proceedings were completed. No further decisions, other than the procedural decision of 21 May 2003 rejecting the applicant's appeal, have been issued by the Court of BiH on the applicant's detention. The applicant complains that he has never been brought before the Court of BiH, has never been questioned by the prosecutor or the preliminary proceedings judge and does not appear to have ever been given sight of the case file or any documentation in the possession of the authorities pertaining to his extradition. While it appears that, on 16 April 2003, the investigative judge of the Cantonal Court in substance provided the applicant with information corresponding to that required by Article 419 of the BiH Code of Criminal Procedure, and gave him an opportunity to be heard, it is undisputed that the BiH Prosecutor has never carried out his duties under Article 419. Moreover, despite a request from the Chamber to provide such documentation, the respondent Party has failed to submit copies of the original *note verbale* of 24 April 2003, the formal request for extradition of 15 May 2003 or any other documentation within its possession that could have been put before the Court of BiH in the extradition proceedings. Accordingly, due to the respondent Party's failure to convince it otherwise, the Chamber must take the applicant's complaints in this regard as unchallenged.

c. Assessment under Article 5(4) of the Convention

96. The Chamber has already found that the applicant should have been brought before the Court of BiH already on 2 April 2003, and not before the Mostar Cantonal Court.

97. The Chamber recalls that after 16 May 2003, when the Court of BiH "took over" the proceedings in the applicant's case from the Cantonal Court, the applicant was never brought before a court. The Chamber finds that, once the Court of BiH on 16 May 2003 ordered the applicant's detention, the respondent Party was under an obligation to grant the applicant *habeas corpus* proceedings compatible with Article 5(4) before the Court of BiH. The fact that the applicant was heard by the Cantonal Court cannot relieve the respondent Party's judiciary from any of its obligations in that respect. As explained above (see paragraphs 91 to 92 above), in order to ensure fair treatment and truly adversarial proceedings, it is a requirement that a detained person be permitted to appear at the same time as the prosecution and be given an opportunity to challenge the submissions of the prosecution. In certain circumstances this requires that the detained person be entitled to participate in an oral hearing, as the lack of contact with the court may be incompatible with the right of *habeas corpus*. Moreover, the BiH Code of Criminal Procedure requires that an individual detained pending extradition shall be questioned by the Prosecutor (Article 419) and, once detention has been decided, he shall be brought before the preliminary proceedings judge (Article 420). Accordingly, the procedure adopted in the present case was also in violation of the BiH Code of Criminal Procedure.

98. Considering that the respondent Party has failed to establish that the applicant was provided with any documentation pertaining to his extradition, the Chamber must therefore accept the submissions of the applicant as unchallenged. In this respect, not only has the respondent Party acted in violation of the fundamental guarantees under Article 5(4) of the Convention, it has also violated its own law, namely Article 419(1) by not providing the applicant with any documentation pertaining to his extradition.

d. Conclusion under Article 5(4) of the Convention

99. In sum, the Chamber finds that the lack of access to a court, the failure to provide the applicant with any documentation pertaining to his extradition, as well as the inability to reply to the

submissions of the prosecution and submissions of the Federal Republic of Germany requesting extradition is not compatible with the minimum adversarial element of Article 5(4), i.e. the right to be heard in person or through some other form of representation. Taking all the above into consideration, there has been a violation of Article 5(4) of the Convention in this respect.

3. Conclusion as to the merits

100. The Chamber therefore finds, in conclusion, that the respondent Party has violated the applicant's rights as guaranteed under Articles 5(1)(f) and 5(4) of the Convention.

VIII. REMEDIES

101. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the breaches of the Agreement, which it has found, "including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures". The Chamber is not limited to the requests of the applicant.

102. In his application to the Chamber, the applicant requested release from detention. He further requested the Chamber to order the respondent Party to order the renewal of the extradition proceedings. The applicant further seeks compensation for pecuniary damage in the amount of 20,000 Convertible Marks (*Konvertibilnih Maraka*, "KM"), compensation for non-pecuniary damage in the amount of 30,000 KM and compensation for legal costs and expenses in the amount of 3,000 KM.

103. The respondent Party has not submitted observations on the applicant's requests for compensation or other remedies.

104. The Chamber recalls that it has established serious violations of Articles 5(1)(f) and 5(4) of the Convention in the present case. It also notes with concern that the applicant was extradited on 12 June 2003 in violation of the BiH Code of Criminal Procedure and the Convention. Therefore, the Chamber is unable to order any remedy other than financial compensation. The Chamber finds it appropriate, considering the case in general terms, to award the applicant compensation for non-pecuniary damage for the harm suffered in the amount of 2,000 KM. This amount is to be paid within one month from the date of delivery of this decision, that is to say no later than 22 January 2004.

105. The Chamber will now turn to the question of compensation for legal costs and expenses incurred in the proceedings before the Chamber. The Chamber notes that the applicant and his legal representative have failed to submit any evidence of the expenses incurred. In the *Marjanović* case (case nos. CH/00/373 *et al.*, *Vejlko Marjanović and others*, decision on admissibility and merits of 9 October 2001, paragraph 103, Decisions July-December 2001), the Chamber noted that it could not consider the applicant's claim for compensation for expenses incurred in the absence of specific evidence. Therefore, the Chamber will not award any compensation to the applicant in the present case for legal costs and expenses.

106. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in paragraph 104 above. Interest shall be paid as of one month from the date on which the sums awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

107. For the above reasons, the Chamber decides,

1. unanimously, to declare admissible the application as directed against Bosnia and Herzegovina under Articles 5 paragraph 1(f) and 5 paragraph 4 of the European Convention on Human Rights;
2. unanimously, to declare the remainder of the application inadmissible;
3. unanimously, that the applicant's detention was in violation of Article 5 paragraph 1(f) of the European Convention on Human Rights, Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that the applicant was prevented from taking proceedings by which the lawfulness of his detention could be decided speedily by a court, thus violating the applicant's rights as guaranteed under Article 5 paragraph 4 of the European Convention on Human Rights, Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;
5. by 6 votes to 5, to order Bosnia and Herzegovina to pay to the applicant, within one month from the date of delivery of this decision, that is to say no later than 22 January 2004, the sum of 2,000 KM (two thousand Convertible Marks) by way of compensation for non-pecuniary damage;
6. by 6 votes to 5, that simple interest at an annual rate of 10% (ten percent) will be payable on the sum awarded in conclusion 5 above, from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision;
7. by 6 votes to 5, to dismiss the applicant's request for compensation for legal costs and expenses incurred in the proceedings before the Chamber;
8. by 9 votes to 2, to dismiss any remaining claims for compensation; and
9. unanimously, to order Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court within three months from the date of delivery of this decision, that is to say no later than 22 March 2004, 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