DECISION ON THE MERITS

of

CASE No. CH/96/22

Milivoje BULATOVIĆ

against

the State of Bosnia and Herzegovina

the Federation of Bosnia and Herzegovina

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 3 November 1997, with the following members present:

Michèle PICARD, President
Jakob MÖLLER, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Mehmed DEKOVIĆ
Giovanni GRASSO
Manfred NOWAK
Vitomir POPOVIĆ
Viktor MASENKO-MAVI

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the merits of the Application by Milivoje BULATOVIĆ against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina registered under Case No. CH/96/22 and declared admissible by the Chamber on 10 April 1997 under Article VIII paragraph 2 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 on the merits of the case under Article XI of the Agreement and Rules 57 and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The applicant contracted in 1992 to buy from the Yugoslav National Army ("the JNA") an apartment which he occupied in Sarajevo. The contract was annulled by legislation passed shortly after the General Framework Agreement for Peace in Bosnia and Herzegovina came into force in December 1995. The applicant complains that the annulment of his contract violated his property rights as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights and alleges various other violations of his human rights arising from related matters. The applicant also complains that he is threatened with eviction from his apartment under legislation relating to abandoned apartments. The respondent Parties in the application, as declared admissible by the Chamber, are the State and the Federation of Bosnia and Herzegovina.

2. The application was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") under Article V paragraph 5 of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement. In her decision referring the case to the Chamber she found that it raised issues under Articles 6, 8 and 13 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The case was referred to the Chamber by the Ombudsperson on 5 November 1996. It was initially directed only against the Federation. The Chamber considered the case on 8 November 1996 and decided to request the Federation not to evict the applicant from the apartment occupied by him pending the Chamber's consideration of the case. On 11 December 1996 it decided to request both the State and the Federation of Bosnia and Herzegovina to submit written observations on the admissibility and merits of the case, including comments on a number of specific questions. It also again requested the Federation not to evict the applicant from the apartment pending its consideration of the case and further requested it to ensure that the applicant was not harassed or disturbed in his possession of the apartment by the army or other authorities. On 12 December 1996 a letter dated 3 December 1996 was received from the Federation Minister of Justice making observations in relation to the Federation's responsibility for the matters at issue. No other observations were received from either respondent Party. On 10 April 1997 the Chamber declared the case admissible.

4. After declaring the case admissible the Chamber invited both respondent Parties to submit written observations on the merits of the case. On 10 April 1997 the Chamber also decided to hold an oral hearing on the merits of this and four other cases also concerning property matters. By letter dated 5 May 1997 the Federation adhered to the observations previously submitted in its letter of 3 December 1996. No response was received from the State of Bosnia and Herzegovina. The hearing was held on 4 June 1997. The applicant was present in person and represented himself. The Federation was represented by its Agent, Mr Džemaludin Mutapčić, and by Ms Nura Pinjo. The State of Bosnia and Herzegovina was not represented. At the close of the hearing the Federation representatives asked for the opportunity to submit further written observations. As an exceptional measure the Chamber decided to allow all parties to submit any further written observations they wished to make. The Federation submitted further observations on 17 June 1997. The applicant also submitted further written observations on 19 June 1997. On 3 July 1997 he also submitted observations in response to the Federation's observations of 17 June. These observations were received within the time limit set by the Chamber, which expired on 3 July 1997. The Chamber deliberated on the merits of the cases on 6 and 7 August 1997.

5. The Chamber further deliberated on the merits of the case on 7, 9 and 10 October 1997. On 3 November 1997 it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

6. The facts of the case are, for the most part, not in dispute. This part of the decision first sets out a summary of the relevant national law. Thereafter the facts of the case are outlined.

A. The Relevant National Law

1. Law Relating to the Sale of JNA Apartments

7. The apartment occupied by the applicant was social property over which the JNA had jurisdiction. Social property was property which was considered to belong to society as a whole. The applicant held an occupancy right in his apartment. An occupancy right was a right, subject to certain conditions, to occupy an apartment on a permanent basis.

8. The applicant contracted to purchase his apartment under the Law on Securing Housing for the Yugoslav National Army, (SL SFRJ No. 84/90). This was a Law of the Socialist Federal Republic of Yugoslavia ("the SFRJ"), which was passed in 1990 and came into force on 6 January 1991. Article 20 of the Law provided that the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase the apartment on the basis of a contract made with the authority responsible for the apartment. Article 21 laid down a formula for calculating the price payable for apartments so purchased. The price was based on a valuation of the apartment, subject to a number of deductions. In particular in the case of serving or retired members or civilian employees of the JNA, provision was made for a deduction based on the re-valued amount of the purchaser's contributions to the JNA Housing Fund. This Law has not been adopted as part of the law of Bosnia and Herzegovina or the Federation.

9. On 15 February 1992 the Government of the Socialist Republic of Bosnia and Herzegovina issued a Decree imposing a temporary prohibition on the sale of socially owned property, (SL SRBH, No. 4/92). Article 2 of this Decree provided for a temporary prohibition of the sale of socially owned apartments under *inter alia* the Law on Securing Housing for the JNA. Article 3 of the Decree provided that contracts and other legal acts concluded contrary to the provisions of the Decree were invalid and Article 4 provided that courts and other state organs should not verify signatures or register titles or take other actions which were contrary to the prohibition provided for in Article 1. Article 5 of the Decree provided that the temporary prohibition on sales should be valid until the entry into force of a law regulating *inter alia* the sale of apartments over which the JNA exercised jurisdiction, and at longest for a year following the date of issue of the Decree.

10. It has been suggested that because the Decree of 15 February 1992 (SL SRBH No. 4/92) purported to prohibit contracts provided for in federal legislation, it contravened Article 207 of the Constitution of the SFRJ, which provided in its second paragraph that republican and provincial statutes, and various other specified forms of law, should not be contrary to federal statute.

11. On 15 June 1992 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (SL RBH No. 6/92) providing for the transfer of resources of the SFRY to the Republic of Bosnia and Herzegovina. Under Article 1 of this Decree social resources, including real property, located on the territory of the Republic, which had been used by the JNA, became the property of the Republic of Bosnia and Herzegovina. By the Decree with force of law on the Resources and Financing of the Army of Bosnia and Herzegovina (SL RBH No. 6/93 as amended by No. 17/93) it was provided that social resources of the former SFRJ which had been used by the JNA were placed under the temporary use and management of the army of the Republic. The Law on the Transformation of Social Property (SL RBH No. 33/94) which became applicable on 1 January 1995, provided in Article 1 that all property which had formerly been categorised as social property was transformed into state property and that the Federation did not have the right to it. Article 9 of this law provided that ownership of property over which the Republic of Bosnia and Herzegovina had the

right of disposal, and division of that property between the Republic and the Federation of Bosnia and Herzegovina, would be regulated by a particular law. No such law has yet been passed.

12. On 15 July 1994 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on Real Property Transactions (SL RBH 18/94). This provided, in Article 1, that contracts relating to real property transactions must be in writing and that the signatures of the contracting parties must be verified by a competent court. Article 3 of the Decree provided that written contracts concluded prior to the entry into force of the Decree were valid if the parties had fulfilled all obligations arising from the contracts completely or substantially. It further provided that contracts concluded prior to the entry into force of the Decree would be considered valid provided the parties had their signatures certified by a competent court within six months of the entry into force of the Decree.

13. On 3 February 1995 the Presidency of the Republic issued a Decree with force of law amending the Law on the Resources and Financing of the Army. This Decree (SL RBH 5/95) provided that for the protection of the housing fund of the army, until the issuing of the Law on Housing in the Republic, courts and other state authorities should adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree came into force on 10 February 1995, the date of its publication in the Official Gazette.

14. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (SL RBH 50/95) amending the Law on the transfer of the resources of the SFRJ into the property of the Republic. This provided that contracts for the sale of apartments and other property concluded on the basis of *inter alia* the Law on Securing Housing for the JNA were invalid. This Decree came into force on 22 December 1995, the date of its publication on the notice board. It was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 18 January 1996 (SL RBH 2/96).

15. The Decree of 22 December 1995 (adopted as law) also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a law to be adopted in the future. Draft legislation concerning the purchase rights of occupancy right holders has been prepared. This would provide rights of purchase for occupancy right holders on defined terms under which the price paid under annulled contracts would be taken into account.

2. Law Relating to Abandoned Apartments

16. The Law on Abandoned Apartments (SL RBH 6/92, 8/92, 12/92, 16/92, 13/94, 36/94, 9/95 and 33/95) relates to apartments subject to occupancy rights which have been abandoned by the holder of the occupancy right. Article 1 of the Law provides that an occupancy right is temporarily suspended where the holder of the right and members of his family have abandoned the apartment to which the occupancy right relates. Article 2 provides that an apartment which has been abandoned and which is temporarily not being used by the holder of the occupancy right or members of his household, is to be considered as abandoned.

17. Article 3 provides for a number of situations in which an apartment is not to be considered as abandoned. In particular it provides *inter alia* that an apartment is not to be considered as abandoned if the holder of the occupancy right starts to use the apartment within seven days after the entry into force of the law if he is within the territory of the Republic of Bosnia and Herzegovina or within fifteen days after the entry into force of the law if he is outside that territory. It also provides that an apartment is not to be considered as abandoned if the holder of the occupancy right, or members of his household, within the terms stated in a formal approval of a stay abroad or in another place within the country, have left the apartment due to having been sent by a medical institution for the purpose of receiving medical treatment.

18. Article 7 of the Law provides that an abandoned apartment may be temporarily allocated to an active combatant or to persons who have left their own homes due to the effects of the state of imminent war danger.

19. Article 10 of the Law provides that an apartment is to be considered as permanently abandoned if the holder of the occupancy right does not start to use the apartment again within the

time limit stated in Article 3 of the law (i.e., seven days if the holder of the occupancy right is within the territory of the Republic and fifteen days if he is elsewhere) after the date on which the Decree on cessation of the state of war is issued. The holder of an occupancy right over an apartment of the former JNA loses the right on the basis of a decision of the Commander of the General Staff after expiry of the time limit. The Decree on Cessation of the State of War was issued on 22 December 1995.

20. The Law provides for the forcible eviction of persons unlawfully resident in abandoned apartments.

B. The Facts of the Case

21. The applicant is a citizen of Bosnia and Herzegovina and is a retired member of the JNA. At all material times, apart from the period of absence mentioned below, he has resided in a JNA apartment at Branilaca Sarajeva 19-B in Sarajevo ("the apartment"), over which he held an occupancy right. On 10 February 1992 he entered into a written contract with the JNA for the purchase of the apartment under the law on Securing Housing for the JNA. On 13 February 1992 he paid the purchase price of 532,526 Yugoslav Dinars which was due under the contract. On 14 February 1992 the Court of First Instance II in Sarajevo verified the signatures on the contract.

22. On 21 October 1994 the applicant instituted civil proceedings in the Court of First Instance I in Sarajevo, seeking to establish that he was the owner of the apartment and entitled to registration as such in the land register. According to the applicant hearings in the case were scheduled and postponed five times without justification. On 20 March 1995 the Court issued a decision adjourning the applicant's action under the Decree of 3 February 1995.

23. By decision dated 22 November 1995 the Ministry of Health of the Federation of Bosnia and Herzegovina authorised the applicant and his wife to travel abroad to obtain medical treatment. According to the applicant he and his wife left for such treatment on 8 December 1995. He arranged for another family, the "T" family, to occupy the apartment during their absence, it being arranged that they would move out when the applicant and his wife returned. The applicant states that he returned to Sarajevo on 8 July 1996 and that he has been threatened with eviction since, and also, until December 1996, subjected to harassment by the army authorities.

24. The Federation suggests that the real reason for the applicant leaving the apartment was that he had arranged to exchange the apartment with the "T" family and that such exchanges were unlawful. It maintains that during a routine check of the apartment on 5 December 1995 Mr "T" was found to be in the apartment without any legal ground. It suggests that the decision authorising the applicant to leave the country for medical treatment was unnecessary since he was not under military obligation and did not require authority to leave, that in leaving the apartment the applicant was in breach of the law and the contractual terms governing his occupancy right and that the authorities were justified in declaring his apartment to be abandoned.

25. Two decisions relating to the alleged abandonment of the apartment have been produced. The first decision dated 10 December 1995 is a decision of the General Staff taken under the Law on Abandoned Apartments declaring that the apartment was abandoned. The second is a decision of the General Staff dated 24 May 1996 taken under the same law and declaring the apartment to be permanently abandoned. The applicant maintains that the first time he received either of these decisions was in September 1996 when the Federation submitted them to the Ombudsperson. Eviction orders dated 11 July 1996 and 10 December 1996, apparently based on the latter decision, were served on the applicant.

IV. FINAL SUBMISSIONS OF THE PARTIES

26. The applicant submits that the retroactive annulment of his purchase contract and the adjournment of his civil proceedings in the courts have involved the violation of his rights under Articles 6 and 13 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention. He also submits that his threatened eviction from his apartment involves the breach of the aforementioned Articles and also of Article 8 of the Convention.

27. No submissions have been received from the State of Bosnia and Herzegovina.

28. The Federation of Bosnia and Herzegovina first maintains that it is not responsible for the matters complained of by the applicant. It further submits that the applicants complaints of alleged violations of his human rights are in any event ill-founded and that they should be rejected.

V. OPINION OF THE CHAMBER

29. In terms of Article XI paragraph 1 (a) of the Annex 6 Agreement the Chamber must, in the present decision, address the question whether the facts found indicate a breach by either of the respondent Parties of their obligations under the Agreement. It is convenient to deal first with arguments of a general character advanced by the Federation in relation to its responsibility for the matters complained of.

A. Responsibility of the Federation

30. The Federation of Bosnia and Herzegovina (in the following text "the Federation") maintains that it is not responsible for the matters complained of by the applicant, in respect firstly that the legislation at issue was not passed by the legislature of the Federation, and secondly that housing policy is, in terms of Article III para. 4 (d) of the Constitution of the Federation, the responsibility of Cantons and Districts and not of the Federation.

31. The Chamber first points out that under Article I of the Annex 6 Agreement the Parties to the Agreement are under a direct obligation to secure to all persons within their jurisdiction the human rights and fundamental freedoms referred to in the Agreement. The applicant's complaints concern the application within the territory of the Federation, as part of the law of the Federation, of laws concerning his housing and property rights. The Chamber notes that housing and property matters are not amongst the matters listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace) as being within the responsibility of the institutions of Bosnia and Herzegovina. Since these matters are "not expressly assigned in this Constitution" to the institutions of the State, they fall within the responsibility of the Entities by virtue of Article III paragraph 3 (a) of the Constitution. The Federation is therefore responsible for both the content and the application of legislation in force in its territory concerning the subject-matter of the applicant's complaints. This is so, in the Chamber's opinion, even if the legislation was not passed by the institutions of the Federation.

32. As to the second branch of the Federation's argument the Chamber notes that under Article II paragraph 2 of the Annex 6 Agreement it has jurisdiction to consider alleged or apparent violations of human rights where such violations are alleged or appear "to have been committed by the Parties, *including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ,*" (emphasis added). It follows from the words emphasised that the Parties are responsible under the Agreement for violations of human rights committed at any level of governmental organisation, including the level of cantons and municipalities, and are also subject to the Chamber's jurisdiction in relation to such violations. The Chamber adds that it is not in any event clear that the matters complained of in the present case, which concern legislation and its application by the army authorities and courts, are within the responsibility of the cantons.

B. The Annulment of the Applicant's Contract

33. The applicant complains that the contract which he entered into for the purchase of his apartment was annulled retroactively by the Decree issued on 22 December 1995, which was adopted as law on 18 January 1996. He alleges the breach of Article 1 of Protocol No. 1 to the European Convention on Human Rights, which is in the following terms:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

34. The Chamber will first consider whether, at the time when the Decree came into force, the applicant had any rights under his contract which constituted "possessions" for the purposes of Article 1. In this respect it first notes that the European Commission and Court of Human Rights have given a wide interpretation to the concept of "possessions" and have held that it covers a variety of rights and interests which can be described as constituting "assets" (see e.g. Van Marle v. Netherlands, 1986 Series A No. 101, para. 41; Pressos Compania Naviera S.A. v. Belgium, 1995 Series A No. 332, para. 31). Assuming the applicant's contract to have been valid (which there is no reason to doubt since the contract was entered into before 15 February 1992) it conferred on him rights to occupy the apartment as owner, and to have himself registered as owner. Although the contract did not of itself transfer to him any real right of property in the apartment it thus conferred on him valuable personal rights which in the Chamber's opinion constituted "assets" and were "possessions" for the purposes of Article 1 of the Protocol.

35. The effect of the Decree of 22 December 1995 (adopted as law) was to annul the applicant's contractual rights and he was therefore "deprived of his possessions" by the Decree. It is accordingly necessary for the Chamber to consider whether this deprivation of property was justified under Article 1 of the Protocol as being "in the public interest" and "subject to the conditions provided for by law." The third requirement of Article 1, that a taking of property should be in accordance with the "general principles of international law" is not applicable in the present case since the applicant is a citizen of Bosnia and Herzegovina and the principles in question "are not applicable to a taking by a State of the property of its own nationals" (James and Others v. United Kingdom, 1986 Series A No. 98, para. 66).

36. The Chamber recalls that the European Court of Human Rights has held that in considering whether a taking of property is compatible with Article 1 it is necessary to consider whether the measure in question pursued a legitimate aim in the public interest and furthermore whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. There must be a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights and this will not be found if the individual in question has to bear "an individual and excessive burden" (see e.g. James and Others v. United Kingdom, *sup. cit.,* paras. 46 & 50).

37. As to whether the Decree of 22 December 1995 (adopted as law) pursued a legitimate aim, the Federation has submitted that the purpose of the Decree was to rectify a violation of the constitutional principle of equality of treatment. It has argued that some members of the JNA had been placed in an especially privileged position in relation to the purchase of their flats and were able to purchase them on terms more favourable than other occupiers of socially owned apartments. The European Court of Human Rights has held that in deciding what is in the public interest the national authorities enjoy a wide "margin of appreciation" and that their judgement will be respected unless it was "manifestly without reasonable foundation" (James Case, *sup. cit.,* para. 46). Bearing this wide margin of appreciation in mind, the Chamber can accept that the aim of putting all holders of occupancy rights on an equal footing as regards their rights to purchase their apartments might in principle be regarded as a legitimate one. There is no evidence, however, that the applicant was placed in an especially privileged position.

38. It remains to be considered, however, whether there was a reasonable relationship of proportionality between the means employed and the end sought to be realised. In this respect the Chamber notes that the effect of the legislation was to annul retroactively, and without compensation, existing contractual rights which the applicant had held since 1992. In the Chamber's opinion such retroactive legislation must be regarded as a particularly serious form of interference with property rights. It involves an infringement of the principle of the rule of law, referred to in the Preamble to the Convention, and carries the danger of undermining legal security and certainty. In the Chamber's opinion it can therefore be justified only by cogent reasons. Even though the applicant may have been able to purchase the apartment on relatively favourable terms, the Chamber is not satisfied that there was any form of social injustice involved in the system established by the Law on Securing Housing for the JNA which was of such magnitude as to justify retroactive legislation of the kind adopted. It notes in particular that reductions from the price established by valuation of JNA apartments were based to a large degree on contributions which the purchasers had made to the housing fund sometimes, as in the present case, over many years. It notes furthermore that the value of the apartments in question must have been substantially affected by the existence of the occupancy rights over them. They were not apartments which the JNA could have disposed of on the open market with vacant possession. In the circumstances the Chamber considers that the aim of achieving equality between different classes of occupancy right holders "could warrant prospective legislation" bringing their rights into line with each other but "could not justify legislating with retrospective effect with the aim and consequence of depriving the applicants" of their acquired contractual rights, (see *mutatis mutandis* Pressos Compania Naviera S.A. v. Belgium, *sup. cit.*, para. 43).

39. The Chamber concludes that the annulment of the applicant's contractual rights by the Decree of 22 December 1995 violated his rights under Article 1 of Protocol No. 1 to the Convention and that the Federation is responsible for that violation in respect that the Decree in question is recognised and applied as part of its law. The Chamber will deal separately with the question of the responsibility of the State of Bosnia and Herzegovina at the end of this opinion, (see paras. 49-52 below).

C. Compulsory Adjournment of the Applicant's Civil Action

40. The applicant complains that the civil proceedings that he instituted with a view to obtaining recognition of his rights as owner of his apartment and registration as such in the land registry have been compulsorily adjourned by virtue of the Decree of 3 February 1995 (No. 5/95, see para. 13 above). He alleges the breach of Article 6 of the European Convention on Human Rights in this respect. So far as material Article 6 is in the following terms:

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

41. The Chamber notes that the proceedings in question have been adjourned, and thus completely inactive, since shortly after the Decree in question entered into force. In so far as that situation has continued since the Annex 6 Agreement came into effect, and continues up to the present day so far as the Chamber is aware, there is a continuing interference with the applicant's right of access to court for the purpose of having his civil claim determined, as guaranteed by Article 6, (see Golder v. United Kingdom, 1975 Series A No. 18). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of the Protocol to the Convention and finds that there is a breach of Article 6 of the Convention in the case of the applicant in so far as the compulsory adjournment of his case has continued since 14 December 1995. The Chamber also finds that in consequence of the adjournment the duration of the proceedings has been prolonged beyond a "reasonable time" since that date, the case having been completely inactive. There is therefore a breach of Article 6 in this respect also.

42. In respect that the breaches of Article 6 which it has found result from laws which are in force and applied in the Federation, and from acts or omissions of courts within the Federation, the Chamber finds that the Federation is responsible for these violations of the applicant's rights also.

D. The Alleged Absence of an Effective Remedy for the Applicant

43. The applicant also maintains that he has been the victim of a breach of Article 13 of the Convention in respect that no effective remedy has been available to him in respect of his above complaints under the Convention. Article 13 provides as follows:

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

44. In view of its decision under Article 6 (1) of the Convention to the effect that the applicant has been denied access to court to establish his property rights, the Chamber considers it unnecessary also to examine the complaints under Article 13 of the Convention. The requirements of Article 13 of the Convention are less strict than those of Article 6, and in the present context are, in the Chamber's opinion, absorbed by Article 6, (see e.g. Hentrich v. France, 1994 Series A No. 296, para. 65).

E. The Threatened Eviction of the Applicant under Abandoned Property Legislation

45. The applicant also complains that his apartment has been declared to be abandoned and that he has been threatened with eviction under the Law on Abandoned Apartments (see paras. 16-20 above). In the decision on the admissibility of the case the Chamber found that issues arose under Articles 6, 8 and 13 of the Convention and under Article 1 of Protocol No. 1 to the Convention in relation to this complaint.

46. The Chamber has first considered the matter under Article 1 of Protocol No. 1 to the Convention, (see para. 33 above). It notes that the action taken by the authorities is only possible because of their refusal to recognise the applicant's rights under the purchase contract. The Law on Abandoned Apartments is not applicable to properties occupied by private owners and if the applicant's status as owner of the apartment had been recognised he could not therefore have been evicted under it. Even if it would have been possible for the authorities to allocate the apartment temporarily to another person under the legislation applicable to private properties, the applicant would not have faced the threat of permanent exclusion from the apartment which is still present today.

47. In the Chamber's opinion the continuing threat of eviction therefore constitutes an additional and serious interference with the applicant's right to peaceful enjoyment of his possessions which flows from the violation of his rights which the Chamber has already found. For that reason there is an additional violation of Article 1 of the Protocol, for which the Federation is also responsible.

48. Having reached that conclusion the Chamber finds it unnecessary, taking account of the particular circumstances of the case, to examine this aspect of the case under any of the other Articles of the Convention which it has referred to.

F. Responsibility of the State of Bosnia and Herzegovina for the Violations Found

49. The Chamber has already pointed out that the matters which the applicant complains of are not within the responsibilities of the institutions of the State of Bosnia and Herzegovina listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement). A question nevertheless arises as to whether the State of Bosnia and Herzegovina is responsible for the annulment of the applicant's contract since the Decree of 22 December 1995

which annulled the contract was issued by the Presidency of the Republic of Bosnia and Herzegovina and adopted as law by the Assembly of the Republic, (see para. 14 above).

50. The State of Bosnia and Herzegovina has not participated in the proceedings in the present cases and has not denied responsibility for the matters complained of, although the Chamber notes that in the similar case of Turčinović v. State and Federation of Bosnia and Herzegovina its Agent argued that it and other cases of a similar kind were not within the jurisdiction of the State institutions under the Constitution, (See Decision on Admissibility dated 9 May 1997, para. 13).

51. Article I paragraph 1 of the Annex 4 Constitution provides that the Republic of Bosnia and Herzegovina, henceforth named "Bosnia and Herzegovina," is to "continue its legal existence under international law as a state." Paragraph 4 of Annex II to the Constitution, which deals with transitional arrangements, provides for the continued operation of existing institutions in the following terms:

> "Until superseded by applicable agreement or law, governmental offices, institutions and other bodies of Bosnia and Herzegovina will operate in accordance with applicable law."

52. The Chamber notes that at the time when the Decree in question was issued and adopted as law, the legislative organs provided for in the Constitutions of both the State and the Federation had not yet been established. The former institutions of the Republic, including the legislative institutions, continued to operate. In so far as they did so, however, they functioned as institutions of the continuing State of Bosnia and Herzegovina, which is therefore responsible for their acts. Since institutions of the State were responsible for passing the legislation which annulled the applicant's contract, the State is therefore responsible for the violation of Article 1 of Protocol No. 1 arising from the annulment of the contract which the Chamber has found (see para. 39 above).

VI. REMEDIES

53. Under Article XI paragraph 1(b) of the Agreement the Chamber must address in its Decision the question what steps shall be taken by the respondent Party or Parties in question, in this case the State and Federation of Bosnia and Herzegovina, to remedy the breaches of the Agreement which it has found.

54. The breach of Article 1 of Protocol No. 1 which the Chamber has found in relation to the annulment of the applicant's contract, arose from the legislation already referred to. The State is responsible for having passed that legislation, but the matters which it deals with are now within the responsibility of the Federation, which recognises and applies the legislation. In these circumstances the Chamber considers that it is the responsibility of the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicant's contract which was imposed. It will therefore make an order against the Federation to that effect. It is also appropriate to order the respondent Party not to evict the applicant from the apartment in question.

55. The Chamber will also order the Federation to lift the compulsory adjournment of the court proceedings instituted by the applicant, which it has found to be in violation of Article 6 of the Convention, (see paras. 40-41 above).

56. The Chamber further considers it appropriate to allow the applicant to submit, within three months of the date of the public delivery of the present decision, any claims he wishes to put forward against either respondent Party for monetary relief or other remedies within the scope of Article XI paragraph 1 (b) of the Agreement.

VII. CONCLUSIONS

57. For the reasons given above the Chamber:

- 1. **Decides** by eleven votes against one that the passing of legislation providing for the retroactive nullification of the applicant's contract for the purchase of his apartment involves violation by Bosnia and Herzegovina of the applicant's rights under Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and that Bosnia and Herzegovina is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

- 2. **Decides** by eleven votes against one that the recognition and application within the Federation of the legislation providing for the retroactive nullification of the applicant's contract involves violation by the Federation of Bosnia and Herzegovina of the applicant's rights under Article 1 of Protocol No. 1 to the Convention and that the Federation is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement;

- 3. **Decides** by a unanimous vote that the continuing adjournment since 14 December 1995 of the civil proceedings instituted by the applicant involves violation by the Federation of the applicant's rights to access to court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention and that the Federation is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement;

- 4. **Decides** by a unanimous vote that the threatened eviction of the applicant involves an additional violation by the Federation of his rights under Article 1 of Protocol No. 1 to the Convention and that the Federation is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement;

- 5. **Decides** by eleven votes against one to **order** the Federation of Bosnia and Herzegovina to take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicant's contract imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

- 6. **Decides** by a unanimous vote to **order** the Federation of Bosnia and Herzegovina to lift the compulsory adjournment of the court proceedings instituted by the applicant and to take all necessary steps to secure the applicant's right of access to court;

- 7. **Decides** by a unanimous vote to **order** the Federation of Bosnia and Herzegovina not to evict the applicant from the apartment occupied by him;

- 8. **Decides** by a unanimous vote to **order** the Federation of Bosnia and Herzegovina to report to it by 8 January 1998 on the steps taken by it to give effect to this Decision;

- 9. **Decides** by a unanimous vote to reserve for further consideration the question whether any other remedies should be ordered against either respondent Party and to allow the applicant to submit before 9 February 1998 any claim he wishes to put forward in that respect.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate concurring opinion by MM. Giovanni GRASSO, Želimir JUKA, Vlatko MARKOTIĆ, Jakob MÖLLER, Manfred NOWAK and Vitomir POPOVIĆ.

Separate Concurring Opinion by MM. Grasso, Juka, Markotić, Möller, Nowak and Popović

1. We do not agree with para. 48 of the decision of the Chamber, because we consider it necessary to examine whether the threat of eviction of Mr Bulatović constitutes also a violation of Article 8 of the European Convention in addition to the violation of the Article 1 of Protocol No. 1.

2. The essential object of Article 8 is to protect individuals from arbitrary interference with their right to respect for their homes and private and family life by public authorities (European Court of Human Rights, Kroon v. Netherlands, judgement of 27 October 1994, Series A, No. 297-C, para. 31). The threatened eviction of the applicant from the flat where he lives with his family constitutes a serious interference with his right to respect for his home by the public authorities. This interference cannot be justified under the limitation clause of Article 8 para. 2 of the European Convention because the law on which it is based (the Law on Abandoned Apartments) is not applicable to this case as was rightly pointed out by the Chamber (see para. 46 of the Decision). Consequently this interference cannot be considered to be "in accordance with the law" and constitutes a violation of Article 8 of the European Convention.

3. This violation, in our view, is not absorbed by the violation of Article 1 of Protocol No. 1, because this latter provision does not consider the influence of the violation committed by the public authorities on the applicant's "own personal security and well-being," which are connected with the right to respect for his home (see *mutatis mutandis*, European Court of Human Rights, Gillow Case, 24 November 1986, Series A, No. 109, para. 55). It is the right to personal and family life of the applicant and his right to live undisturbed in his home which are put in danger through the behaviour of the authorities.

4. For these reasons we consider that the threatened eviction of Mr Bulatović constitutes also a violation by the Federation of Bosnia and Herzegovina of his rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(signed)	Giovanni GRASSO	(signed)	Želimir JUKA
(signed)	Vlatko MARKOTIĆ	(signed)	Jakob MÖLLER
(signed)	Manfred NOWAK	(signed)	Vitomir POPOVIĆ