



DECISION ON THE ADMISSIBILITY AND MERITS

of

CASE No. CH/96/28

“M.J.”

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 7 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 admissibility and merits of the Application by “M.J.” against the Republika Srpska, registered under Case No. CH/96/28;

Adopts the following Decision on the admissibility and merits of the case under Article VIII paragraph 2 and Article XI of the Human Rights Agreement set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina and Rules 52, 57 and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak descent. He and his family were forcibly evicted from their apartment in Banja Luka in September 1995 by a Serbian refugee, Mr. K.V. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which ordered the eviction of Mr K.V. Several attempts were made to execute its decision but without results because the police did not take any action to assist court officials. The case concerns non-enforcement of the court decision and raises issues under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

2. This case was referred to the Chamber by decision of the Human Rights Ombudsperson for Bosnia and Herzegovina (hereinafter "the Ombudsperson") dated 20 November 1996, taken under Article V paragraph 5 of the Human Rights Agreement (hereinafter "the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

3. The Chamber considered the case on 21 March 1997 and decided under Rule 49 (3) (b) of its Rules of Procedure to give notice of the application to the Government of the Republika Srpska and to invite them to submit written observations on the admissibility and merits of the case. The respondent Party submitted its observations by letter dated 29 April 1997. The representative of the applicant submitted observations in reply on 25 June 1997 and by letter of 9 July 1997 the Ombudsperson also submitted observations in reply.

4. On 3 September 1997 the Chamber considered this and two other cases, Blentić and Bejdić v. Republika Srpska, which raised similar issues. It decided to hold a public hearing on the admissibility and merits of the three cases. The hearing was held in Sarajevo on 8 October 1997. The applicant was represented by Ms Minka Gluhać. The respondent Party was represented by its Agent, Mr Stevan Savić. The Ombudsperson was represented by Ms Simona Granata, Deputy Ombudsperson, Mrs Valerija Šaula, Senior Legal Expert, and Mr Zlatko Kulenović, Senior Legal Expert.

5. The Chamber deliberated on the merits of the case on 9 October and on 6 and 7 November 1997. On 7 November 1997 it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

6. The facts of the case as they appear from the parties' submissions and the documents in the case file are not generally in dispute and may be summarised as follows.

7. The applicant has held an occupancy right over an apartment in Banja Luka since 1966. He occupied the apartment as his home together with his wife and daughter. On 19 September 1995 he, his wife and daughter were forcibly evicted from the apartment by three armed persons. According to the applicant they were reserve police from Drvar. The applicant subsequently found out that a Mr KECMAN Veljko (Mr K.V.) had moved into the apartment on the night in question. The applicant's wife died on 14 October 1995.

8. On 12 October 1995 the applicant instituted proceedings against Mr K.V. in the Court of First Instance in Banja Luka, seeking his eviction from the apartment on the basis of disturbance of possession. He alleged in the application to the Court that he had been forcibly evicted from the apartment by Mr K.V. without legal ground. The Court scheduled a hearing in the case for 19 December 1995. Mr K.V. did not appear. The applicant gave oral evidence as to the circumstances of his eviction. The Court gave its decision on the same day. It appears from the decision that the

applicant stated that he had heard knocking on the door at about 20.00 hours on the evening in question. He had asked the persons outside to identify themselves and they had stated that they were police. They had attempted to break in. He had called the public security station Mejdan for assistance and two policemen from there had arrived at the apartment. They had entered the apartment first followed by the three reserve police from Drvar, who had been at the door. The police from the Mejdan Station had questioned him and left. The three police from Drvar had then given him five minutes to leave the apartment together with his wife and daughter. The Court stated in its decision that it found the applicant's allegations and oral statements to be truthful. It found that the applicant had been disturbed in his possession of the apartment and ordered Mr K.V. to vacate the apartment immediately, and at the latest within eight days, and also to refrain from similar disturbances.

9. Mr K.V. did not comply with the order of the Court. On 24 January 1996 the Court issued a Decision on Execution in which Mr K.V. was ordered to vacate the apartment and place it at the disposal of the applicant, free of all persons and his things, together with all belongings of the applicant. Mr K.V. did not comply with this decision and on 12 February 1996 the Court issued an Executory Conclusion. This stated that it was decided to carry out the Decision on Execution of the Judgement on 11 March 1996 and that the execution would be carried out by an official assisted by organs of public security and military police, delivering into the applicant's possession the apartment free of all persons and things. On 11 March 1996 the court official and police went to the apartment. Mr K.V. was at the apartment with ten to twenty other people. They adopted a threatening attitude and refused to leave. The eviction was not carried out. Further Executory Conclusions in similar terms were issued by the Court in which the eviction was scheduled for 29 April 1996, 23 May 1996, 19 July 1996, 9 September 1996, 14 October 1996 and 22 November 1996. According to the applicant a similar situation arose on each of these occasions, namely that a group of people assembled to oppose the eviction and that in the face of threats, insults and obstruction from these people and inaction on the part of the police, the eviction was not carried out.

10. On the last two occasions on which the eviction was scheduled, i.e. 14 October and 22 November 1996, the court official and the police stated that the eviction could not be carried out because the person in the apartment was not Mr K.V. but a Mr Marinko RUJEVIĆ. The court official and the police informed the applicant's representative that they could not carry out the eviction because Mr K.V. was no longer in the apartment and it would be necessary to bring proceedings against Mr Rujević.

11. On or about 23 December 1996 the applicant instituted proceedings against Mr Rujević in the Court of First Instance in Banja Luka seeking to recover possession of the apartment from Mr Rujević. He also sought, as a provisional measure, an order for immediate possession of the apartment and its contents. In his application to the Court he set out details of the events which had occurred from the time of his forcible eviction onwards and suggested that it was more than obvious that Mr Rujević had moved illegally into the apartment on the basis of an agreement with Mr K.V., with the intention of preventing the execution of the lawful order of the Court. According to the applicant's representative numerous oral requests were made to the Court to schedule a hearing. A hearing was fixed for 31 March 1997 but was postponed on the ground that the respondent was undergoing medical treatment abroad. On 8 May 1997 a request for the matter to be treated urgently was submitted to the Court by the applicant's lawyer. A further hearing was scheduled for 18 September 1997. According to the applicant Mr Rujević claimed that he had not received the application to the court. The applicant's lawyer has objected to the judge in these proceedings. It appears that no decision has been taken on the merits of the case or on the application for provisional measures and that the proceedings are still pending.

IV. FINAL SUBMISSIONS OF THE PARTIES

A. The Applicant

12. The applicant submits that his rights under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention have been violated by reason of his inability to recover possession of his apartment.

B. The Respondent Party

13. The respondent Party submits that the applicant has not exhausted all effective remedies at his disposal since the Court proceedings for recovery of the apartment are still pending and that the Chamber should declare the application inadmissible under Article VIII paragraph 2 (a) of the Agreement.

C. The Ombudsperson

14. The Ombudsperson submits that the Chamber should find that there have been violations of Articles 6 and 8 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

V. OPINION OF THE CHAMBER

A. Admissibility

15. Before considering the merits of the case the Chamber must decide whether to accept the case taking into account the admissibility criteria set out in Article VIII paragraph 2 of the Annex 6 Agreement.

16. The respondent Party has suggested that the Chamber should not deal with the case whilst proceedings are still pending before the courts of the Republika Srpska, in particular whilst the proceedings instituted by the applicant against Mr Rujević, the second unlawful occupant of his apartment, are still pending. The Chamber has considered this argument in the light of paragraph 2 (a) of Article VIII of the Agreement, which, so far as relevant, provides as follows:

“The Chamber shall decide which applications to accept....In so doing the Chamber shall take into account the following criteria:

(a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted....”

17. In relation to the rule concerning exhaustion of domestic remedies in Article 26 of the European Convention on Human Rights, the European Court of Human Rights has, in the case of *Akdivar v. Turkey*, stated as follows:

“Under Article 26 normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness...” (*Akdivar v. Turkey*, Judgement of 16 September 1996, para. 66).

The Court also stated that in applying the rule it is necessary to “take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants” (*ibid.* para. 69). These principles should also be taken into account, in the Chamber’s opinion, in the application of the criterion concerning exhaustion of remedies in Article VIII paragraph 2 (a) of the Agreement.

18. The Chamber notes that in the present case the applicant obtained a judgement against Mr K.V. giving him the right to re-obtain possession of the apartment and that he made repeated attempts to enforce the judgement without success. The applicant has thus had “normal recourse” to the court remedy available to him to restore possession of the apartment whilst it was in the hands of Mr K.V., but the remedy in question has proved to be ineffective in practice. In so far as the applicant’s complaint relates to the failure of the authorities to enforce the judgement in the period up to Mr K.V.’s apparent departure from the apartment no effective remedy is now available to him.

19. In so far as the applicant’s complaint relates to his continuing inability to obtain possession of his apartment, now apparently occupied by Mr Rujević, he has instituted civil proceedings against Mr Rujević and those proceedings are still pending. However there appears to be no reason why this remedy should be any more effective in practice against Mr Rujević than it was against Mr K.V. In the Chamber’s opinion it is not therefore established with sufficient certainty that any effective remedy is in practice available to the applicant. The Chamber therefore finds that there is no obstacle to the admissibility of the application under Article VIII paragraph 2 (a) of the Agreement.

20. The Chamber finds no other ground for declaring the application inadmissible under Article VIII paragraph 2 of the Agreement. It points out however that it has no competence under the Agreement to consider whether any violation of the applicant’s human rights occurred before the Agreement came into force, (see Case No. CH/96/1, Matanović v. Republika Srpska, Decision on Admissibility dated 13 September 1996). It concludes that the application should therefore be accepted as admissible and examined on its merits in so far as it relates to violations of the applicant’s human rights which are alleged to have occurred since the Agreement came into force on 14 December 1995.

B. The Merits

21. Under Article XI of the Agreement the Chamber must, in the present decision, address the question whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement. In terms of Article I of the Agreement the Parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms” including the rights and freedoms provided for in the Convention. The Chamber will therefore consider whether the applicant’s exclusion from his apartment has involved a breach by the respondent Party of his rights under the Articles of the Convention which have been invoked in the proceedings.

1. Article 8 of the Convention

22. The Chamber has first considered the case in the light of Article 8 of the Convention, which provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

23. The question which arises is whether the failure of the authorities to enforce the judgement in question against Mr K.V., and the applicant’s continued exclusion from the apartment since Mr K.V. moved out, involved a violation of the applicant’s right to respect for his “home.” The Chamber has already found that the applicant, together with his wife and daughter, occupied the apartment in question as their home before they were turned out by Mr K.V. (see para. 7 above). It also follows from the findings of the Banja Luka Court of First Instance that the initial eviction of the applicant and his family and their continued exclusion from the house thereafter by Mr K.V. were unlawful. In the

Chamber's opinion the facts of the case therefore reveal an unlawful interference on the part of Mr K.V. with the applicant's right to respect for his home, which continued at least until the time when he moved out of the apartment in about October 1996. After Mr K.V. moved out he was replaced by Mr Rujević. It has not been suggested that he had any right to occupy the apartment and in the Chamber's opinion it is established that his occupation of the apartment also amounted to an unlawful interference with the applicant's right to respect for his home, which has continued to the present time.

24. According to the applicant members of the police of the respondent Party participated in his initial unlawful eviction, which occurred before the Agreement came into force. On the evidence before it the Chamber does not, however, consider it established that the police or other public authorities of the respondent Party have taken an active role in maintaining the applicant's continued exclusion from the apartment since 14 December 1995. It is suggested however, by the applicant and the Ombudsperson, that the respondent Party is responsible for the applicant's continued exclusion because the police were passive and failed to give necessary assistance to the court officials in carrying out the eviction of Mr K.V. The police appear to have taken the attitude that they were justified by considerations of public safety in not taking an active role.

25. The European Court of Human Rights has held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees, and that in this context, as in others, a fair balance must be struck between the general interest and the interests of the people concerned (see e.g. *Marckx v. Belgium*, 1979 Series A No. 31, para. 31; *Airey v. Ireland*, 1979 Series A No. 32, para. 32; *X & Y v. Netherlands*, Series A No. 91, paras. 23 *et seq.*; *Velosa Barreto v. Portugal*, 1995 Series A No. 334, para. 23). Furthermore in considering whether a fair balance has been struck in relation to the positive obligations flowing from the first paragraph of Article 8, the aims mentioned in the second paragraph also have a certain relevance (*Lopez Ostra v. Spain*, 1994 Series A No. 303C, para. 51).

26. In the Chamber's opinion the obligation effectively to secure respect for a person's home implies that there must be effective machinery for protecting it against unlawful interference of the kind which the applicant has suffered. In particular there must be effective machinery for obtaining and enforcing court orders restoring possession where a person has been unlawfully evicted from his home. In the present case the applicant has been unlawfully excluded from his home for over two years. The police gave no assistance to court officials in repeated attempts, starting on 11 March 1996, to enforce the order of the court for the eviction of the unlawful occupant, Mr K.V., and tolerated repeated obstruction of the officials in the execution of their duty. Since Mr K.V. moved out in about October 1996, the applicant has attempted, without success so far, to obtain a further court order against a new illegal occupant, Mr Rujević, who appears to have moved into the apartment with the connivance of Mr K.V.

27. With reference to the period before Mr K.V. moved out of the apartment, the Chamber recognises that the authorities responsible for carrying out an eviction may face a difficult task if they are obstructed by people opposed to the eviction, and that they may legitimately find it necessary in some circumstances to delay taking action for reasons of public order. They are bound however to take steps to deal with such a situation. In the context of Article 11 of the Convention the European Court of Human Rights has held that a State is under a positive obligation to take reasonable and appropriate measures to protect lawful demonstrations from violence by counter demonstrators, although the authorities cannot guarantee a successful outcome and have a wide discretion as to the means to be used, (*Plattform Ärzte für das Leben v. Austria*, 1988 Series A No. 139, paras. 30 - 34). In the Chamber's opinion in the situation which arose in the present case Article 8 imposed a similar positive obligation on the public authorities to take effective, reasonable and appropriate measures to deal with the difficulties posed by the assembly of people obstructing the applicant's return to his home. In the present case there is no evidence that the police ever took any action at all to assist the court officials or to prevent the systematic obstruction of their work over the period before Mr K.V. moved out of the apartment. The information before the Chamber indicates that they were entirely passive at each eviction attempt despite the fact that the Law on Executive Procedure in force in the Republika Srpska provides for the police to support the authorities responsible for the execution of court decisions. Furthermore no attempt has been made to prosecute those responsible for

obstructing the execution of the order of the court, although this would have been possible under domestic law. In the Chamber's opinion such a situation is incompatible with the rule of law and involves a breach of Article 8 of the Convention by the respondent Party.

28. As to the situation since Mr K.V. moved out of the apartment, the Chamber first notes that the court order against Mr K. V. provided that he should leave the apartment at the disposal of the applicant "free of all persons and things," (see para. 9 above). Since he appears not to have complied with that order the Chamber finds it surprising that no further possibility of enforcing the original order should have been open to the applicant. It notes, however, that the applicant started a civil action directed against the new squatter, Mr Rujević, on 26 December 1996. In his application to the court he set out details of the earlier proceedings, including his attempts to evict Mr K.V., and also asked the Court to order the restoration of the apartment to him as a provisional measure. The facts which he set out in his application to the Court were such as to suggest that Mr Rujević's occupation of the house was a flagrant violation of his rights carried out with a view to avoiding enforcement of the earlier judgement. In that situation, in order to ensure that the applicant's right to respect for his home was effectively secured, it was necessary for the court to treat the matter as one of urgency. However from the information available it appears that no substantive hearing has been held and that no decision even on the application for provisional measures has been given. No adequate explanation for this state of affairs has been given by the respondent Party and in the Chamber's opinion such a situation is incompatible with Article 8 of the Convention.

29. The Chamber therefore concludes that the applicant's rights under Article 8 of the Convention have been violated by reason of the failure of the authorities to enforce the judgement in the applicant's favour and the failure of the Court to deal with sufficient urgency with the second action raised by the applicant.

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

30. Article 1 of Protocol No. 1 to the Convention provides as follows:

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

31. The European Court of Human Rights has held that this provision "guarantees in substance the right of property" and "comprises three distinct rules." The first rule, in the first sentence of Article 1, lays down the general principle of the peaceful enjoyment of possessions. The second rule, in the second sentence, covers deprivation of possessions and makes it subject to certain conditions. The third rule, in the second paragraph, concerns the State's right to enforce laws controlling the use of property. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property, (see e.g. *Scollo v. Italy*, 1995 Series A No. 315, para. 26). Where a measure affecting property is not within the ambit of either the second or the third rule, it is necessary to consider whether there has been a violation of the first rule, for which purpose it must be determined "whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights" (*Sporrong & Lönroth v. Sweden*, 1982 Series A No. 52, para. 69).

32. As to the present case, the Chamber first notes that the applicant is not the owner of the apartment in question but holds an occupancy right over it. To determine whether Article 1 of Protocol No. 1 is applicable it is therefore necessary to consider whether the occupancy right was a "possession" within its meaning. In this respect it 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 wide variety of rights and interests having economic value (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). The Chamber has itself held that the concept extends to cover

contractual rights under contracts for the purchase of property, even though such contracts did not of themselves give rise to real rights of property (Cases Nos. CH/96/3, 8 & 9, Medan and Others v. State and Federation of Bosnia and Herzegovina, Decision on the Merits delivered on 7 November 1997). The Chamber notes that an occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. In certain circumstances at least it can be transferred. In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 as interpreted by the European Commission and Court. Article 1 of the Protocol is therefore applicable.

33. The present case is not concerned with an expropriation by the public authorities of the Republika Srpska or with the application of laws controlling the use of property. It relates to a failure by the authorities to protect the applicant against unlawful interference with his possessions by private individuals. In the Chamber's opinion the case must therefore be considered under the first, general rule in Article 1. This general rule may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights, (see para. 25 above; see also Application No. 20357/92, Whiteside v. United Kingdom, 76A DR p. 80). The Chamber notes, furthermore, that it is implicit in the Court's Judgement in the case of Scollo v. Italy (*sup. cit.*) that such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction. In the present case the Chamber considers, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that the failure of the authorities to take the necessary measures to enforce the court order obtained by the applicant against Mr K.V., and the failure of the court to proceed with sufficient urgency with the second civil action, involved failures effectively to secure his right to peaceful enjoyment of his possessions. There has therefore been a breach of his rights under Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

34. Article 6 of the Convention, so far as relevant, provides as follows:

"1. In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by (a) ...tribunal..."

The applicant and the Ombudsperson suggest that the applicant's rights under this provision have been violated by reason of the failure to enforce the court order.

35. The European Court of Human Rights has held that Article 6 applies to enforcement proceedings following on the decision of a tribunal within its scope (Scollo v. Italy, 1995 Series A No. 315C; Hornsby v. Greece, Judgement of 19 March 1997). In particular in the Hornsby case it pointed out that Article 6 embodies the "right to a court" and stated that:

"...that right would be rendered illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should prescribe in detail procedural guarantees afforded to litigants...without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention....Execution of a judgement given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6; moreover the Court has already accepted this principle in cases concerning the length of proceedings" (para. 40 of the Judgement).

36. In the Scollo case the Court found that prolonged delay in the enforcement of a judgement giving the applicant entitlement to the possession of an apartment had involved a breach of Article 6 of the Convention, pointing out that "the inertia of the competent administrative authorities" engaged the responsibility of the State (paras. 44 - 45 of the Scollo Judgement). In the Hornsby case it found that by failing over a period of five years to take the necessary measures to comply with a judicial decision the relevant authorities had "deprived the provisions of Article 6 (1) of the Convention of all useful effect" and that there was therefore a breach of that Article (para. 45 of the Hornsby Judgement). In the Chamber's opinion the situation is similar in the present case, where the police

were passive despite the obligation on them to assist in the execution of the court decision against Mr K.V. The inertia of the competent authorities, including that of the court in the second set of proceedings, involves a breach of the applicant's right to a determination of his civil rights within a "reasonable time" and has also deprived Article 6 (1) of all useful effect.

37. The Chamber therefore finds that there has been a violation of the applicant's rights under Article 6 (1) of the Convention.

4. Article 13 of the Convention

38. During the proceedings it has also been suggested that the applicant has been the victim of violations of his rights under Article 13 of the Convention, which guarantees the right to an "effective remedy" where a violation of the Convention occurs. This question was not pursued at the hearing and in view of the conclusion it has reached in relation to Article 6 of the Convention, the Chamber finds it unnecessary to examine the case under Article 13.

VI. REMEDIES

39. Under Article XI paragraph 1 (b) of the Agreement the Chamber must address the question what steps shall be taken by the respondent Party to remedy the breaches of the Agreement which it has found. In the present case the Chamber considers it appropriate to order the respondent Party to take effective measures to restore to the applicant his possession of the apartment in question. It will also order the respondent Party to report to it before 3 February 1998 on the steps taken by it to comply with this order. The Chamber will also reserve to the applicant the right to apply to it before 3 March 1998 for any monetary relief or other redress he wishes to claim.

VII. CONCLUSIONS

40. For the above reasons the Chamber **decides** as follows:

- 1. By eleven votes against one that the failure of the authorities of the respondent Party to enforce the court decision in the applicant's favour and the failure of the court to deal with sufficient urgency with the second civil action raised by the applicant involve violations by the respondent Party of the applicant's rights under Article 8 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;
- 2. By ten votes against two that the aforesaid failures also involve violations by the respondent Party of the applicant's rights under Article 1 of Protocol No. 1 to the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;
- 3. By eleven votes against one that the aforesaid failures also involve breaches by the respondent Party of the applicant's rights under Article 6 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;
- 4. By eleven votes against one to **order** the respondent Party to take effective measures to restore to the applicant possession of the apartment referred to in the relevant orders of the Court of First Instance in Banja Luka;
- 5. By eleven votes against one to **order** the respondent Party to report to it before 3 February 1998 on the steps taken by it to comply with the above order;
- 6. By eleven votes against one to **reserve** to the applicant the right to apply to it before 3 March 1998 for any monetary relief or other redress he wishes to claim.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber