# DECISION ON ADMISSIBILITY AND MERITS
**(delivered on 11 February 2000)**

**Case no. CH/97/110**

**Munib MEMIĆ**

**against**

**BOSNIA AND HERZEGOVINA**
**and**
**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 February 2000, with the following members present:

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

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

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

## I. INTRODUCTION

1. The applicant, a pensioner, is a citizen of Bosnia and Herzegovina of Bosniak origin. On 21 February 1992 he entered into a contract to purchase from the Yugoslav National Army ("JNA") an apartment in Sarajevo over which he had an occupancy right. During the war in Bosnia and Herzegovina the applicant left Sarajevo. Shortly after the cessation of hostilities, his apartment was declared abandoned and given to another occupant. The applicant seeks to regain possession of the apartment.

2. The applicant alleges a violation of his right to return to his apartment and the right to protection of his property. In addition, he claims that he has not been treated fairly by the various government organs that have been dealing with his complaints.

## II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 15 December 1997 and registered on the same day. The Chamber received additional statements from the applicant on 25 February, 7 July, 19 September and 3 November 1998, and 15 January, 26 April and 10 December 1999.

4. On 17 June 1998 the Chamber transmitted the case to the Federation of Bosnia and Herzegovina for its observations on admissibility and merits. On 10 July 1998 the Chamber received observations from the Federal Ministry of Defense of the Federation of Bosnia and Herzegovina. On 19 August 1998 the Chamber received the applicant's reply to these observations.

5. On 21 January 1999 the Chamber requested observations on admissibility and merits from Bosnia and Herzegovina. No such observations have been received, however.

6. On 12 January and 8 February 2000 the Chamber deliberated on the admissibility and merits of the case. It adopted this decision on the latter date.

## III. ESTABLISHMENT OF THE FACTS

### A. Particular facts of the case

7. From 19 March 1981 the applicant had an occupancy right and a completed contract on use for an apartment owned by the JNA and located at Topal Osman Paše No. 18/I/114 (previously Milutina Đurašković a) in Sarajevo. On 21 February 1992 he entered into a contract to purchase the apartment under the Law on Securing Housing for the JNA. The contractual price was 1,353,991.44 Yugoslav dinars (YUD). The contract states that the applicant had previously paid YUD 701,553.75 for the apartment through his regular Military Housing Fund contributions and was to pay the remainder in monthly instalments. The applicant states that he paid one instalment in March 1992 but stopped paying because of the onset of the war which made it impossible to make payments to the authorities in Belgrade.

8. Later in 1992 the applicant left Sarajevo because of the war in Bosnia and Herzegovina. It should be noted that the apartment in question was located on the front line of the war. Apparently, on 24 September 1996, while the applicant was still away from Sarajevo, the military administrative housing organ declared the applicant's apartment abandoned, thereby terminating his occupancy right, and the apartment was reallocated for permanent use to another individual, A.O., an employee of the army of the Federation of Bosnia and Herzegovina.

9. After the end of the hostilities the applicant returned and attempted to reenter his apartment on 26 March 1997. However, he was prohibited from entering the apartment by A.O. Since that time the applicant has had temporary accommodation through the United Nations High Commissioner for Refugees at the Centre for Displaced Persons in Ilijaš, the Federation of Bosnia and Herzegovina. He asserts that A.O. has other dwellings in the Sarajevo area in which she could live.

#### 1. Proceedings involving organs associated with the army of the Federation of Bosnia

**and Herzegovina**

10. On 28 March 1997 the applicant wrote to the housing organ of the Sarajevo Garrison of the army with a request to repossess the apartment. He sent another similar letter on 25 August 1997 to General Rasim Delić, Commander of the army. The applicant has not received any response to these letters.

11. The applicant then wrote directly to the Federal Ministry for Refugees and Displaced Persons, the Council of Ministers of Bosnia and Herzegovina, and President Alija Izetbegović on 9 September 1997 seeking assistance on these requests. He did not receive a response.

12. On 16 September 1997 the applicant submitted a request to the Administrative Inspectorate of the Federal Ministry of Justice regarding the failure of the housing organ of the Sarajevo Garrison to act in his case. This, however, did not yield any favorable results as the Inspectorate did not have access to the information necessary to act on the applicant's request.

13. On 29 September 1997 the applicant submitted a letter to the Federal Ministry of Defense of the Federation of Bosnia and Herzegovina complaining about the housing organ's failure to act and requesting the return of his apartment. On 22 December 1998 the applicant was summoned to appear at a hearing before the military administrative housing organ. However, the applicant claims that the hearing did not at all focus on the issues relating to his apartment, but instead the officials present questioned him on personal matters of little relevance. There is no evidence that that body has issued a decision to date. The applicant claims that he has not received a decision because A.O. is an employee of the army and is using her influence to block his efforts.

**2. Court proceedings**

14. On 15 May 1997 the applicant initiated proceedings before the Municipal Court II in Sarajevo asking that A.O. be evicted from the apartment. At the first hearing on 17 November 1997, A.O. failed to present documentation regarding her right to possess the apartment. The court therefore rescheduled the hearing for 4 April 1998 requesting that A.O. bring such documentation. This hearing was then postponed until 21 April 1998.

15. At the hearing on 21 April 1998 A.O. failed to bring all the requested documents. The court rescheduled the hearing for 1 July 1998, again asking that A.O. bring all the relevant documents.

16. A.O. failed to appear at the hearing on 1 July 1998. The applicant alleges that, at this hearing, the judge in the case told him that if A.O. presented the proper documentation, she would gain a judgment in her favour. The court again rescheduled, this time for 10 September 1998. On that date, the court issued a procedural decision that because the applicant's apartment had been previously declared abandoned (thereby terminating the applicant's occupancy right), and A.O. had been allocated the apartment for permanent use, the court was incompetent to hear the case as the subject matter was thus within the competence of the relevant municipal housing authority (as established in Article 4 paragraph 2 of the Law on the Cessation of the Application of the Law on Abandoned Apartments; see paragraph 36 below).

17. The applicant maintains, however, that the military administrative housing organ's termination of his occupancy right and subsequent reallocation was only obtained by A.O. through an abuse of her position as an employee of the army. He further claims that he has never received the decision declaring the apartment abandoned that was allegedly issued by the housing organ on 24 September 1996.

18. On 18 September 1998 the applicant appealed against the decision of the Municipal Court II to the Cantonal Court in Sarajevo. He argued that his apartment should not have been declared abandoned or re-allocated because, under Article 3 paragraph 2 of the Law on Abandoned Apartments, an apartment shall not be declared abandoned if in direct jeopardy of war. There is no evidence that the Cantonal Court has made a decision on this appeal.

**3. Administrative proceedings**

19. On 18 April 1998 the applicant submitted a request to the Novo Sarajevo Administration for Housing Affairs for repossession of the apartment under the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new law"). Although that law states that a decision must be made within 30 days of submission of a claim for repossession, the applicant did not receive a decision within that time-limit. In May 1998, therefore, the applicant submitted a second request, this time to the Novo Sarajevo Department of the Cantonal Ministry for Environmental Planning, Housing and Municipal Affairs.

20. On 27 August 1998 the applicant filed a "silence of the administration" claim with the Cantonal Ministry. On 18 September 1998 that body asked the Novo Sarajevo Administration for Housing Affairs to explain, within 15 days, why it had not made a decision on the applicant's request of 18 April 1998. The administration has not responded to this letter.

21. A.O. continues to occupy the apartment.

## B. Relevant legislation

### 1. Legislation relating to JNA Apartments

22. The apartment in question was originally socially owned property over which the JNA had jurisdiction and over which the applicant enjoyed an occupancy right. Socially owned property was considered to belong to society as a whole. Among other things, an occupancy right conferred a right, subject to certain conditions, to occupy an apartment on a permanent basis.

23. Relevant to this case is the Law on Securing Housing for the JNA which came into force on 6 January 1991 (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" - no. 84/90). This law established that JNA apartments could be sold to the members of the JNA (Article 20), having regard to their contributions to the JNA housing fund. It also established the authority so that procedures could be set up to do so (Article 36). In the following years a number of decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina. The aim of those laws was to regulate issues of socially owned property in general and socially owned property over which the JNA had jurisdiction in particular.

24. These laws included a decree issued on 15 February 1992 ("the 1992 decree") by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" – no. 4/92). Article 1(3) of this decree imposed a temporary prohibition on the sale of socially owned apartments, specifically under the means established by the Law on Securing Housing for the JNA. Article 3 of the decree provided that "the contracts on the purchase of apartments or any other legal transactions entered into, i.e. legal documents issued contrary to this decree, are null and void". Article 4 provided that courts and other state organs should not verify signatures or register titles or take other action which was contrary to the prohibition provided in Article 1. Article 5 stated that the temporary prohibition on sales was valid until the entry into force of a law regulating apartments over which the JNA exercised jurisdiction or, at the longest, for a year following the date of issue of the decree.

25. On 10 February 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (OG RBiH no. 5/95) which ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA until new housing legislation had been adopted.

26. On 22 December 1995 the Presidency issued another decree with force of law (OG RBiH no. 50/95) stating that contracts for the sale of apartments and other property concluded on the basis of the Law on Securing Housing for the JNA were retroactively invalid. It was adopted as law by the Assembly of the Republic and promulgated on 18 January 1996 (OG RBiH no. 2/96). This decree also provided that questions connected with annulled real estate purchase contracts would be resolved under a law to be adopted in the future.

27. The Law on the Sale of Apartments with an Occupancy Right came into force on 6 December 1997 and has subsequently been amended (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 27/97, 11/98 and 27/99). This law, as amended, does not affect the annulment of the present applicant's contract. Under Article 39 of this law, an occupancy right holder who contracted to purchase an apartment on the basis of the Law on Securing Housing for the JNA shall be credited the amount which has been previously paid, calculated in German Marks (DEM) at the exchange rates valid on the day of contracting.

### 2. The Law on Abandoned Apartments

28. The Law on Abandoned Apartments ("the old law"), originally issued on 15 June 1992 as a decree with force of law, was adopted as law on 1 June 1994 and amended on various occasions (OG RBiH nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). It governed the re-allocation of occupancy rights over socially owned apartments that had been abandoned.

29. According to the old law, an occupancy right expired if the holder of the right and the members of his or her household had abandoned the apartment after 30 April 1991 (Article 1). An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder or members of the household (Article 2). There were, however, certain exceptions to this definition. For example, an apartment was not to be considered abandoned if the apartment was destroyed, burnt or in direct jeopardy as a result of war actions (Article 3 paragraph 2).

30. Proceedings aimed at having an apartment declared abandoned could be initiated by a state authority, a holder of an allocation right (i.e. a juridical person authorised to grant permission to use an apartment), a political or a social organisation, an association of citizens or a housing board. Except for certain exceptions not relevant to the present application, the competent municipal housing authority was to decide on a request to this end within seven days and could also *ex officio* declare an apartment abandoned (Article 4). Failing a decision within this time-limit, it was to be made by the Ministry for Urban Planning, Housing and Environment. Interested parties could challenge a decision by the municipal organ before the same ministry but an appeal had no suspensive effect (Article 5).

31. An apartment declared abandoned could be allocated for temporary use to "an active participant in the fight against the aggressor of the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostilities (Article 7). Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged to vacate the apartment at the end of that period and to place it at the disposal of the authority that had allocated it (Article 8).

32. The occupancy right holder was to be regarded as having abandoned the apartment permanently if he or she failed to resume using it either within seven days (if he or she had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days (if he or she had been staying outside that territory) from the publication of the Decision on the Cessation of the State of War (OG RBiH no. 50/95, published on 22 December 1995). The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10 compared to Article 3 paragraph 3).

### 3. The Law on the Cessation of the Application of the Law on Abandoned Apartments

33. The old law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new law") which entered into force on 4 April 1998 and has been amended on several occasions thereafter (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99).

34. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 13 April 1999, also all decisions which had created a new occupancy right pursuant to regulations

issued under the old law were valid unless revoked. However, on that date, the High Representative decided that any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 is cancelled. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered as a temporary user (Article 2). Also contracts and decisions made after 7 February 1998 on the use of apartments declared abandoned are invalid. Any person using an apartment on the basis of such a contract or decision is considered to be occupying the apartment without any legal basis (Article 16).

35. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment. In exceptional circumstances, this deadline may be extended for up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared to Article 7 paragraphs 2 and 3).

36. All claims for repossession shall be presented to the municipal administrative authority competent for housing affairs (Article 4). With a few exceptions not relevant to the present application, the time-limit for an occupancy right holder to file a claim for repossession expired 15 months after the entry into force of the new law, i.e. on 4 July 1999 (Article 5 paragraph 1). If no claim was submitted within that time-limit, the occupancy right is cancelled (Article 5 paragraph 3).

37. Upon receipt of a claim for repossession, the competent authority, normally the municipal administrative authority for housing affairs, had 30 days to issue a decision (Article 6) containing the following parts (Article 7 paragraph 1):

1. a confirmation that the claimant is the occupancy right holder;
2. a permit for the occupancy right holder to repossess the apartment, if there was a temporary user in the apartment or if it was vacant or occupied without a legal basis;
3. a termination of the right of temporary use, if there was a temporary user in the apartment;
4. a time-limit during which a temporary user or another person occupying the apartment should vacate it; and
5. a finding as to whether the temporary user was entitled to accommodation in accordance with the Law on Taking Over the Law on Housing Relations.

38. Following a decision on repossession, the occupancy right holder is to be reinstated into his apartment not earlier than 90 days, unless a shorter deadline applies and no later than one year from the submission of the repossession claim (Article 7 paragraphs 2 and 3). Appeals against such a decision could be lodged by the occupancy right holder, the person occupying the apartment and the allocation right holder and should be submitted to the cantonal ministry responsible for housing affairs within 15 days from the date of receipt of the decision. However, an appeal has no suspensive effect (Article 8).

39. If the person occupying the apartment refuses to comply with an order to vacate it, the competent administrative body shall forcibly evict him or her at the request of the occupancy right holder (Article 11). If the occupancy right holder, without good cause, fails to reoccupy the apartment within certain time-limits, his or her occupancy right may be terminated in accordance with the procedures established under the new law and its amendments (Article 12).

### 3. The Law on Administrative Proceedings

40. Under Article 216 paragraph 1 of the Law on Administrative Proceedings (OG FBiH no. 2/98) the competent administrative organ has to issue a decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration").

## IV. COMPLAINTS

41. The applicant alleges that his rights to his apartment have been violated. This allegation raises issues under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention. Further, the applicant alleges that the proceedings in this matter have not been conducted impartially which raises issues under Article 6 paragraph 1 and Article 13 of the Convention, regarding his right to a fair hearing and to an effective remedy, respectively.

## V. SUBMISSIONS OF THE PARTIES

### A. The Federation of Bosnia and Herzegovina

42. The Chamber received observations from the Federal Ministry of Defence for the Federation of Bosnia and Herzegovina on 10 July 1998. This submission is accepted as the observations of the Federation. Therein, it is argued that the application is inadmissible for failure to exhaust effective domestic remedies as, at the time when the observations were submitted, the court proceedings to have A.O. evicted were still pending. Further, the Federation argues that the applicant did not initiate proceedings under the old law with the administrative housing organs of the army or under the new law with the appropriate housing authority. The Federation states that 74 prewar occupancy right holders were able to repossess and reenter their apartments under the old law and that it was therefore an effective remedy.

43. The Federation also asserts that, if the application were found admissible, there are no violations of the applicant's human rights. The applicant's apartment was legally declared abandoned on the basis of the Law on Abandoned Apartments. Further, the Federation states that the reallocation to A.O. was done in accordance with law.

44. Moreover, the Federation argues that the applicant is not the owner of the apartment as the applicant has not paid the full purchase price.

### B. Bosnia and Herzegovina

45. No observations were received from Bosnia and Herzegovina.

### C. The applicant

46. In the applicant's various submissions, he has consistently maintained that the statements of the Federation are incorrect and unacceptable. He asserts that he has exhausted domestic remedies or that any domestic remedies that remain are ineffective. Further, he maintains his complaints regarding possible violations of his human rights.

## VI. OPINION OF THE CHAMBER

### A. Admissibility

47. Before considering the merits of the case the Chamber must decide whether it is admissible, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted.

48. In the *Onić* case (no. CH/97/58, decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but [also] in practice, failing which they will lack the requisite accessibility and effectiveness. ...[M]oreover, ... in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system ... but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants".

49. In its observations, the Federation claims that the applicant has failed to exhaust domestic remedies and that the application is inadmissible as, at the time, the court proceedings to have A.O. evicted were still pending and the applicant had not initiated proceedings either under the old law or the new law. However, following the submission of those observations, the Municipal Court II in Sarajevo has declared the courts incompetent to hear the applicant's claim as recourse lies to the municipal administrative organs. The applicant appealed this decision but has not received a reply.

50. Further, the applicant has since submitted a claim under the new law to the Novo Sarajevo Administration for Housing Affairs. While the Federation argued that the applicant should have pursued his claim before the military administrative housing organs under the old law, the Chamber notes that such an argument is moot given that the old law has been repealed.

51. The applicant's case has been pending before the Administration for over one and a half years despite a legally mandated 30-day time-limit to make decisions in such cases. Owing to this delay, the applicant filed a "silence of the administration" claim on 27 August 1998 to the Cantonal Ministry of Environmental Planning, Housing and Municipal Affairs. On 18 September 1998 the Ministry ordered the Administration to respond within 15 days as to the reasons for the delay in deciding the applicant's claim. There has been no response to this order.

52. The Chamber finds therefore that the available domestic remedies have proved not to be effective in practice. The courts of the Federation have stated that they will not hear the applicant's case until the administrative proceedings have been concluded. Despite the efforts of the applicant and the above-mentioned Ministry, however, the Administration has failed to make a decision. The Chamber finds therefore that the applicant cannot be expected to attempt to exhaust any further remedies.

53. As no other ground for declaring the case inadmissible has been put forward, the Chamber declares the application admissible.

## B. Merits

54. Under Article XI of the Agreement the Chamber must address the question whether the facts established above indicate a breach by one or both of the respondent Parties of their 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 recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the Convention. The Chamber will therefore consider whether the decision declaring the apartment abandoned and allocating it to A.O. for permanent use may be considered a violation of the applicant's rights under Article 1 of the Agreement.

### 1. Article 8 of the Convention

55. In his application to the Chamber, the applicant complains that his inability to re-enter his home is a violation of his human rights. This would appear to raise issues under Article 8 of the Convention, which reads, in relevant parts, as follows:

> "1. Everyone has the right to respect for ... his home ...

> 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."

56. The respondent Parties did not submit any observations relating to this provision.

57. The Chamber has already found that the links which an applicant facing similar difficulties retained to his dwelling sufficed for this to be considered his "home" for the purposes of Article 8 paragraph 1 of the Convention (see, e.g., case no. CH/97/46, *Kevešević* , decision on admissibility and merits delivered on 15 July 1998, paragraph 42, Decisions and Reports 1998).

58. The applicant has been attempting to regain possession of his apartment since May 1997. As these attempts have been unsuccessful, there has been an interference with his right to respect for his home. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied (see the above-mentioned *Onić* decision, paragraph 49).

59. In previous cases, the Chamber has found that the provisions of the old law, including those relevant to this case, failed to meet the standards of "law" as this expression is to be understood under Article 8 of the Convention (see the above-mentioned *Onić* and *Kevešević* decisions). Correspondingly, it is clear that the declaration that the applicant's apartment was abandoned, which is the continuing source of the interference with the applicant's enjoyment of his right to respect for his home, was not done "in accordance with the law", as required by Article 8.

60. In so far as the present case relates to the application of the new law, the Chamber recalls its above findings relating to the admissibility of the case (see paragraph 51). Article 6 of the new law stipulates that a decision shall be made within 30 days from the receipt of the claim. This has not occurred in the applicant's case. Thus, there is an ongoing violation of Article 8 as the procedure for examining his repossession claim under the new law has not been completed "in accordance with the law" (see case no. CH/97/42, *Eraković*, decision on admissibility and merits delivered on 15 January 1999, paragraph 51, Decisions January-July 1999). On this point the Chamber adds that under Article 3 paragraph 9 of the new law it is explicitly stipulated that a failure of, for example, the cantonal authorities to meet their obligations under Article 3 shall not hamper the possibility of an occupancy right holder (such as the applicant) to re-enter the possession of an apartment.

61. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated by virtue of the recognition and application of the old law, by the declaration that the apartment was abandoned, and by the continuing failure of the relevant authority to decide on the applicant's claim to repossess the apartment under the new law. The Federation is responsible for these violations.

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

62. The applicant complains that his right to peaceful enjoyment of his possessions has been violated as a result of his inability to regain possession of his property. This raises issues under Article 1 of Protocol No. 1 to the Convention, which reads 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 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."

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#### (a) Regarding the occupancy right

63. Whereas Bosnia and Herzegovina did not make any observations at all, the Federation of Bosnia and Herzegovina asserts that, as the apartment had been declared abandoned (under the old law) and the applicant was, thus, no longer the occupancy right holder, he had no economic interest in the apartment.

64. The Chamber recalls its consistent case-law according to which an occupancy right is a possession within the meaning of Article 1 of Protocol No. 1 (see the above-mentioned *Onić* decision, paragraph 55). Thus, whether or not the applicant has paid the full purchase price and become the owner of the apartment, the occupancy right he once held constitutes a possession protected under this provision.

65. With regard to the objections of the Federation, the Chamber recalls that it has previously found that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person, done pursuant to the old law amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1 (see, e.g., the above-mentioned *Onić and Kevešević* decisions, paragraphs 56 and 80, respectively).

66. The Chamber notes that the apartment in question was declared abandoned by a decision of the military administrative housing organ of 24 September 1996, a decision which, apparently, the applicant was not notified of until September 1998 in the course of the court proceedings initiated by him. The Chamber finds that the applicant's rights under Article 1 of Protocol No. 1 to the Convention were violated by virtue of the decision of 24 September 1996 and the Federation authorities' continued refusal to recognise the applicant's occupancy right and allow him to return to the apartment.

#### (b) Regarding the purchase contract

67. With respect to the purchase contract, the Federation asserts that the applicant was not the owner of the apartment as he had not completed his contractual obligation of paying for it, and thus the applicant has no rights under the contract which could be a "possession" in terms of Article 1 of Protocol No. 1 to the Convention. Before considering this argument, however, the Chamber notes that the applicant completed his purchase contract on 21 February 1992, six days after the Socialist Republic of Bosnia and Herzegovina issued a decree imposing a temporary prohibition on the completion of such contracts (for a fuller description of this decree, see paragraph 24 above). This would seem to put the validity of the contract in doubt. The respondent Parties have not raised any arguments regarding this issue.

68. However, this issue is not central to the conclusions made in this decision as evidenced by the Chamber already having found a violation of Article 1 of Protocol No. 1 to the Convention regarding the applicant's occupancy right. The Chamber concludes, therefore, that it is not necessary to examine whether there exists a violation by Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina with respect to Article 1 of Protocol No. 1 to the Convention regarding the applicant's rights under the purchase contract. Accordingly, it is also not necessary to address the Federation's argument regarding the applicant's ownership of the apartment.

### 3. Article 6 paragraph 1 of the Convention

69. The applicant complains that the administrative and judicial bodies have failed to conduct the proceedings with impartiality. He alleges that, as A.O. was an employee of the army, these bodies were biased against him. This complaint raises issues under Article 6 paragraph 1 of the Convention regarding the right to a fair hearing before an impartial tribunal. This provision reads, in relevant parts, as follows:

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

70. Bosnia and Herzegovina did not submit observations on this point. The Federation of Bosnia and Herzegovina simply asserts that all proceedings in this matter were conducted in accordance with the laws and regulations in force at the time.

71. Noting that the court and administrative proceedings which are still pending concern the applicant's occupancy right over the apartment in question, the Chamber finds that these proceedings relate to his "civil rights" within the meaning of Article 6 paragraph 1 and that that provision is accordingly applicable to the present case.

72. The Chamber recalls that the impartiality of the tribunal for the purposes of Article 6 paragraph 1 must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see Eur. Court HR, *Fey v. Austria* judgment of 24 February 1993, Series A no. 255, p. 12, paragraph 28).

73. The applicant asserts that the delays in the court proceedings occurred for unjustified reasons. However, the relevant decisions state that the delays occurred because of A.O.'s failure to bring requested documents and to appear in court.

74. The applicant further argues that the judge's statement at the hearing of 1 July 1998, that A.O. would gain a decision in her favour if she presented the requested evidence, shows a lack of impartiality. Without greater substantiation, however, it is impossible for the Chamber to determine whether the judge was justified in making this statement and therefore whether the statement demonstrates a lack of impartiality. While the statement may be irregular, the Chamber cannot find that this statement, standing alone, shows a lack of subjective or objective impartiality. Therefore, it has not been substantiated that the applicant's right to have the dispute in question decided by an impartial tribunal has been violated.

75. The Chamber considers, however, that the case raises the question whether the proceedings have been expedited with reasonable speed. When assessing the length of proceedings for the purposes of Article 6 paragraph 1, the first step is to determine the period to be taken into consideration. The applicant first filed his claim to have A.O. evicted on 15 May 1997. There is still an appeal pending in this matter two years and eight months later. Further, the applicant has ongoing administrative proceedings under the new law before the first instance Administration for Housing Affairs in Novo Sarajevo, filed on 17 April 1998. Despite the intervention of the second instance body, the applicant has not received a decision in this matter.

76. A determination of the reasonableness of the length of proceedings is based on the complexity of the case, the conduct of the applicant and the authorities, and the matter at stake for the applicant (see, e.g., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

77. The issue underlying the court proceedings is who has the right to the property in question. The Chamber cannot find this issue to be of a particularly complex nature.

78. As to the conduct of the applicant it is clear that he has pursued the various procedures available to him in an expeditious manner. He has attempted to speed up the proceedings and have the relevant bodies issue decisions.

79. The authorities in this case, however, have not met their responsibility to ensure that the proceedings are expedited in a reasonable time. The applicant currently has two appeals pending, one administrative and one before the courts. The authorities of the Federation have not acted in accord with its own laws and procedures in an effort to decide these proceedings and has offered no explanation for the delays. Clearly, therefore, the conduct of the authorities is the main cause of the delays in the various proceedings.

80. Finally, the Chamber notes that a speedy outcome of the dispute would have been of particular importance to the applicant, given that the question concerned his home and property.

81. In view of the above, the Chamber finds that Article 6 paragraph 1 of the Convention has been violated in that the proceedings in the applicant's case have not been determined within a reasonable time. The Federation is responsible for this violation.

### 4. Article 13 of the Convention

82. The applicant also complains that he has been the victim of a breach of Article 13 of the Convention as there is no effective remedy available to him.

83. However, the guarantees afforded by Article 13 of the Convention are less strict than those stipulated by Article 6 paragraph 1. Thus, having regard to finding of a violation under the latter provision, the Chamber considers it unnecessary to examine the complaint also under Article 13 of the Convention.

## VII. REMEDIES

84. 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 established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages) as well as provisional measures.

85. The applicant has requested the Chamber to enable him to be reinstated into his apartment. In addition the applicant described a variety of items, including his apartment and other possessions, that he claims have been damaged by either the army or A.O. The respondent Parties did not comment on the applicant's compensation claim.

86. In the present case the Chamber considers it appropriate to order the Federation to take all necessary steps to enable the applicant to return swiftly to his apartment, and in any case not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

87. The applicant's further request that the Chamber hold A.O. responsible for any damage to his apartment or possessions must be rejected as A.O. is not, and cannot be, a respondent Party before the Chamber. Therefore, this request is beyond the Chamber's competence *ratione personae*.

88. Lastly, following its Rules of Procedure, the Chamber asked the applicant if he had any further claims for compensation. The applicant made no such claims. However, neither Article XI(1)(b) of the Agreement nor rule 59 of the Chamber's Rules of Procedure preclude the Chamber from ordering remedies that have not been requested by an applicant (see, e.g., cases nos. CH/98/659 *et al.*, *Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraph 236, Decisions August – December 1999). Given that the applicant has been attempting to regain possession of the apartment for a protracted period of time, and that the delays are primarily the responsibility of the Federation, the Chamber considers it appropriate to order the Federation to pay the applicant 1,200 Convertible Marks (*Konvertibilnih Maraka*) for the mental distress he has suffered as a result of his inability to regain possession of the property.

## VIII. CONCLUSIONS

89. For the above reasons the Chamber decides,

1. unanimously, to declare the case admissible;

2. unanimously, that there has been a violation of the applicant's right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, in so far as his

apartment was declared permanently abandoned and he was prevented from returning to it due to the failure after the entry into force of the Law on the Cessation of the Application of the Law on Abandoned Apartments to decide finally and in time on the substance of his claim for repossession, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that that there has been a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention in so far as his apartment was declared permanently abandoned and he was prevented from returning to it due to the failure after the entry into force of the Law on the Cessation of the Application of the Law on Abandoned Apartments to decide finally and in time on the substance of his claim for repossession, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. by 6 votes to 1, that it is not necessary to rule on the complaint as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina with respect to Article 1 of Protocol No. 1 to the Convention regarding the applicant's rights under the purchase contract;

5. unanimously, that there has been a violation of the applicant's right to a hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that it is not necessary to rule on the complaint under Article 13 of the Convention;

7. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enable the applicant to return swiftly to his apartment, and in any case not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the date when this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 1,200 (one thousand two hundred) Convertible Marks (*Konvertibilnih Maraka*) by way of non-pecuniary compensation for mental suffering; and

9. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber within two weeks of the expiry of the time-limits referred to in conclusions number 7 and 8 on the steps taken by it to give effect to this decision.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel