HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 15 JANUARY 1999

CH/97/42

Dušan ERAKOVIĆ
against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 14 January 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Vlatko MARKOTIĆ
Mr. Želimir JUKA
Mr. Jakob MĆLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of 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 and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Montenegrin descent. He was an occupancy right holder over an apartment in Sarajevo. In 1995 he left Sarajevo in order to get medical treatment. Shortly after the applicant had left, the apartment was declared abandoned and allocated to a third person for temporary use. The sub-tenant of the apartment was evicted. In July 1998 the applicant received a decision under the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new Law") confirming his occupancy right and entitling him to request repossession thereof.

2. The case raises issues principally under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 16 May 1997 and registered on 27 June 1997.

4. On 9 March 1998 the Chamber decided to transmit the application to the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations on 17 and 20 April 1998, stating, *inter alia*, that it would propose an amicable solution, should the Chamber declare the case admissible. On 4 June 1998 the applicant replied to the Federation's observations.

5. On 8 September 1998 the Chamber again considered the case and decided to ask the respondent Party to specify, before 2 October 1998, the proposed terms of a friendly settlement based on the respect for the rights and freedoms referred to in the Agreement. The Chamber also decided to ask the applicant whether he had initiated any proceedings under the new Law in order to be re-instated into his apartment.

6. The respondent Party did not answer within the time-limit set by the Chamber. The applicant stated, on 23 September 1998, that he had initiated proceedings under the new Law and that he had received a decision stating that he was entitled to submit a request to be re-instated in his apartment. He stated, however, that he would not agree to any friendly settlement but would insist on "an unconditional return into his apartment as guaranteed by Dayton".

7. On 15 and 17 December 1998 the Chamber again considered the case. On 8 January 1999 the Agent of the respondent Party referred to her urgent request of 22 December 1998 to be informed by the competent authority of the state of the proceedings in the applicant's case. The Agent requested leave to submit this information as soon as possible on receipt thereof.

8. The Chamber again considered the case on 12 January 1999 and decided to reject the request of the respondent Party to submit further information on the state of the proceedings. On 14 January 1999 the Chamber adopted its decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The facts of the case, as they appear from the applicant's and the Government's submissions and the documents in the case file, are in essence not in dispute and may be summarised as follows.

10. The applicant is the occupancy right holder over an apartment in Envera Šehovića street no.7/IV in Sarajevo. He was injured twice during the war and had to spend some time in hospital. On 12 March 1994 the Municipal Secretariat of Defence allowed him to leave the country for six months. This period was later extended by a further six months. Due to the hostilities the applicant could not

leave Sarajevo until 1 March 1995. On 22 February 1995 he had contracted to sub-let the apartment to V. P. during his absence.

11. On 4 March 1995 the Municipal Secretariat for Housing Affairs declared the apartment temporarily abandoned and, on 7 April 1995, allocated it temporarily to I.T. V.P. was evicted from the apartment on 8 May 1995. The applicant never received a decision. However, he has submitted a copy of the record of the eviction of V.P., in which I.T. is mentioned as the "temporary occupant" of the apartment.

12. Allegedly due to an operation and related health problems the applicant had to stay abroad longer than expected. On 21 June 1996 he returned to Sarajevo but was not successful in trying to re-enter his apartment. On 26 June 1996 he appealed to the Municipal Secretariat for Housing Affairs against the decision declaring his apartment abandoned and requested permission to re-enter it. Later this appeal could not be found.

13. The applicant also requested the public enterprise "Unis Pretis" (the owner and holder of the right to allocate the apartment) to re-instate him into his apartment. On 6 July 1996 "Unis Pretis" rejected this request as being out of time under the Law on Abandoned Apartments but without invoking any specific provision. On 20 November 1996 the Cantonal Ministry for Planning, Housing and Utility Affairs declared the apartment permanently abandoned. The applicant alleges that he did not receive this decision either. Subsequently, "Unis Pretis" permanently allocated the apartment to I.T.

14. The respondent Party informed the Chamber that the Cantonal Ministry for Planning, Housing and Utility Affairs initiated the renewal of the administrative proceedings *ex officio* under Articles 246 and 247 of the Law on Administrative Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina, No. 2/98). A hearing was held on 16 April 1998.

15. On 16 April 1998 "Sarajevostan", a public housing enterprise with which an occupancy right holder has to conclude a contract, certified, for the purposes of proceedings under the new Law, that the applicant was still the holder of the occupancy right in respect of the apartment.

16. On 17 April 1998 the Municipal Secretariat for Housing Affairs terminated the proceedings relating to the applicant's request to be reinstated into his apartment under the old Law and directed him to submit a new claim to this end pursuant to Article 4 of the new Law.

17. By a decision of 28 July 1998 the Cantonal Administration for Housing Affairs, in pursuance of Articles 4 and 6 of the new Law and in response to a fresh claim lodged by the applicant, confirmed his occupancy right and entitled him to reclaim possession of the apartment. The decision further established that I.T. had obtained a new occupancy right on the basis of a contract signed on 7 January 1998 and had moved into the apartment before 7 February 1998. Pursuant to Articles 3(6) and 16 of the new Law the Sarajevo Housing Fund was therefore ordered to refer the case to the competent cantonal authority within 30 days, for a further decision by which either I.T. (as the current occupant of the apartment) or the applicant (as the occupancy right holder) was to be allocated another apartment. The Chamber has not been informed of any decision for the purposes of Article 3 of the new Law, nor of any other developments in the domestic proceedings.

B. Relevant legislation

1. The 1994 Law on Abandoned Apartments

18. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments. This Decree was adopted by the Assembly of the Republic of Bosnia and Herzegovina as a law on 1 June 1994 ("the old Law"). The Law governed the re-allocation of occupancy rights over socially-owned apartments which had been abandoned. On 4 April 1998 it was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments.

19. Under Article 1 of the old Law an occupancy right was to be suspended if the holder of that right and the members of his or her household had abandoned the apartment after 30 April 1991. Article 2 defined an apartment as having been abandoned already if, even temporarily, it was not being used by the occupancy right holder or the members of his or her household. Article 3 provided for some exceptions to this definition, namely

> (a) where the occupancy right holder and members of his or her household had been forced to leave the apartment as a result of aggressive actions intended to execute a policy of ethnic cleansing of a particular population from certain areas or in the course of a pursuit of other goals of the aggressors;
>
> (b) if the apartment was destroyed, burnt or in direct jeopardy as a result of war actions;
>
> (c) if the holder of the occupancy right and members of his or her household had resumed using the apartment either within seven days from the issuing of the declaration on the cessation of the state of war (if the holder of the right had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days from the issuing of this declaration (if he or she had been staying outside that territory);
>
> (d) if the holder of the occupancy right or members of his or her household had, within the terms of the requisite permission to stay abroad or in another place within the country, left the apartment for the purpose of effecting a private or business journey; had been sent as a representative of a state authority, enterprise, state institution or other organisation or association upon the request of, or with the approval of, a competent state authority; had been sent for medical treatment; or had joined the armed forces of the Republic of Bosnia and Herzegovina.

20. The Presidency of the Republic of Bosnia and Herzegovina declared the Republic of Bosnia and Herzegovina to be at war on 20 June 1992 (Official Gazette of the Republic, No. 7/92). The Decision on the Cessation of the State of War was taken on 22 December 1995 (Official Gazette of the Republic, No. 50/95). It was published on the Bulletin Board of the Presidency Building of the Republic in Sarajevo and entered into force on the same day. The issue of the Official Gazette comprising this decision was published on 5 January 1996.

21. A state organ, a holder of an allocation right, a political organisation, a social organisation, an association of citizens or a housing board could initiate proceedings seeking to have an apartment declared abandoned. The competent municipal housing authority was to decide on a request to this end within 7 days and could also *ex officio* declare an apartment abandoned. Failing a decision within this time limit, it was to be made by the Minister for Urban Planning, Housing and Environment (Articles 4-6 of the old Law). Interested parties could challenge a decision by the municipal organ before the same Ministry but an appeal had no suspensive effect.

22. An apartment declared abandoned could be allocated for temporary use to “an active participant in the fight against the aggressor against the Republic of Bosnia and Herzegovina” or to a person who had lost his or her apartment due to hostile action. 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 under the threat of eviction to vacate the apartment at the end of that period and to place it at the disposal of the organ which allocated it (Articles 7-8).

23. If the holder of the occupancy right failed to resume using the apartment within the applicable time limit laid down in Article 3 read in conjunction with Article 10, he or she was to be regarded as having abandoned the apartment permanently. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10).

2. The 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments

24. The Law on the Cessation of the Application of the Law on Abandoned Apartments (“the new Law”) entered into force on 4 April 1998. According to this legislation all administrative, judicial and other decisions terminating occupancy rights on the basis of regulations issued under the old Law

shall be null and void. Nevertheless, all decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new Law. Moreover, all decisions establishing a new occupancy right shall remain in force unless revoked in accordance with the new Law (Article 2). The holder of an occupancy right in respect of an apartment which has been declared abandoned or a member of his or her household is referred to in the new Law as “the occupancy right holder” (Article 3(1)). The holder of a newly allocated occupancy right based either on a decision of the holder of the right of allocation or on a contract is referred to as “the current occupant” (Article 3(6)).

25. The occupancy right holder shall be entitled to seek his or her reinstatement into the apartment at a certain date which must not be earlier than 90 days and no later than one year from the submission of the claim (Articles 3, 4 and 7). The competent authority shall decide on such a repossession claim within 30 days (Articles 6 and 7). The decision shall be delivered to the occupancy right holder, the holder of the allocation right and the current occupant within five days from its issuance. An appeal lies to the Cantonal Ministry for Housing Affairs within 15 days from the date of receipt of the decision. An appeal shall not suspend the execution of the decision (Article 8). In no event shall a failure, either of the cantonal authorities or the holder of the allocation right, to meet their obligations under Article 3, or a failure of “the current occupancy right holder” to accept another apartment, delay the attempts of “an occupancy right holder” to reclaim his or her apartment (Article 3(9)).

26. If the apartment is occupied without a legal basis or was vacant when the new Law entered into force, the occupancy right holder shall be granted repossession of the apartment without any restriction and any temporary user shall be evicted (Article 3(3)). A person who is temporarily occupying the apartment and whose housing needs are otherwise met shall vacate the apartment within 90 days from the decision pursuant to Article 6 (Article 3(4)). If his or her housing needs are not otherwise met, he or she shall be provided with accommodation in accordance with the Law on the Taking Over of the Law on Housing Relations. In such a case the period within which the apartment must be vacated shall not be shorter than 90 days from the issuance of the decision pursuant to Article 6. The apartment must be vacated before the day of the intended return of the occupancy right holder but the intended return must not be sooner than 90 days from the date when the claim for repossession was submitted (Article 3(5) and Article 7(2) of the new Law).

27. In exceptional circumstances the deadline for vacating an apartment may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation provides the cantonal administrative authority with detailed documentation about the efforts to secure alternative accommodation and if the cantonal authority finds that there is documented lack of available housing. In every individual case, the requirements of the Convention and its Protocols must be met, and the occupancy right holder must be notified of the decision extending the deadline, including its reasoning, 30 days before the initial deadline expires (Article 7(3) of the new Law).

28. If “a person occupying the apartment” fails to comply with a decision ordering its vacation, the competent administrative body shall take enforcement measures at the request of the occupancy right holder (Article 11).

29. If a decision within the meaning of Article 6 has been passed in respect of an apartment inhabited by a new occupancy right holder (i.e. the current occupant) (either based on a decision of the holder of the allocation right or on a contract), the holder of the allocation right shall, within 30 days, refer the case to the competent cantonal authority which shall, again within 30 days, allocate another apartment either to current occupant or to the occupancy right holder (Article 3(6)). Under Article 3(7) a finding that the occupancy right holder should be allocated an apartment other than the one into which he or she seeks to be reinstated must be based on criteria in compliance with Article 1 of Annex 7 to the General Framework Agreement for Peace, the Convention and its Protocols and the Law on Housing Relations. These criteria shall be developed by the Ministry of Urban Planning and Environment in consultation with organisations competent to implement the standards stated in Article 3(7). On 21 October 1998 the Government of the Federation published criteria for the purposes of Article 3(7). However, on 5 November 1998 the High Representative for Bosnia and Herzegovina, in accordance with his authority under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and Article XI of the Conclusions of the Bonn Peace

Implementation Conference, suspended the application of Article 3(6) of the new Law. The decision entered into force immediately.

30. According to Article 7 of the new Law, a decision within the meaning of Article 6 shall contain a confirmation that the claimant is the holder of the occupancy right; a decision granting repossession of the apartment to the occupancy right holder if the dwelling is temporarily occupied by someone else, is vacant or is occupied without legal basis; a decision terminating the right of temporary occupancy if the apartment is in temporary use; a time limit by which a temporary user or another person occupying the apartment shall vacate it; and a decision as to whether the temporary user is entitled to accommodation in accordance with the Law on Housing Relations. Under Article 10 of the Instruction of 30 April 1998 on the Application of Article 4 of the new Law, the authority issuing the decision within the meaning of Article 6 of the new Law shall verify the status of the occupancy right; verify whether the apartment is uninhabitable, vacant or occupied; and verify the status of any current occupant (illegal, temporary occupant or person having been living in the apartment prior to 7 February 1998 on the basis of an occupancy right acquired before that date). Contracts on the use of apartments declared abandoned pursuant to regulations issued under the old Law and decisions on the allocation of such an apartment shall be null and void, if concluded or issued after 7 February 1998 (Article 16 of the new Law).

3. The Law on Administrative Proceedings

31. Under Article 139 of the Law on Administrative Proceedings (Official Gazette of the Federation, No. 2/98) the competent administrative authority may issue a decision following summary proceedings when the facts are not in dispute. Under Article 200 the competent administrative authority issues a decision on the basis of the facts established in ordinary administrative proceedings. Under Article 275 the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon receipt of a request to this effect. Article 216(3) provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit.

IV. COMPLAINT

32. The applicant complains that his right to peaceful enjoyment of his possession and his right to legal protection have been violated.

V. SUBMISSIONS OF THE PARTIES

1. The Respondent Party

33. As to the admissibility of the case, the Federation argues that the applicant could have appealed against “the silence of the administration” or sought a renewal of the proceedings prior to the entry into force of the new Law. In any case, the new Law has rendered ineffective the decision terminating the applicant’s occupancy right and has provided an effective remedy which he has not yet exhausted.

34. As for the merits, the Federation further argues that Article 1 of Protocol No. 1 to the Convention is not applicable, as the applicant “failed to protect” his occupancy right and this right cannot at any rate be regarded as a property right according to national legislation. In the alternative, it is argued that the interference with the applicant’s property rights was justified, given the need to provide alternative accommodation to a temporary occupant, who could no longer inhabit his dwelling due to the hostilities.

2. The applicant

35. The applicant maintains his complaint.

VI. OPINION OF THE CHAMBER

A. Admissibility

36. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

37. The Chamber notes *proprio motu* that the applicant's apartment was declared abandoned prior to the entry into force of the Agreement on 14 December 1995. The Chamber observes, however, that the applicant's grievance relate to a situation which has continued up to date, namely the impossibility for him to return to his pre-war dwelling. The Chamber is therefore competent *ratione temporis* to examine the case in so far as this situation has continued past 14 December 1995. In doing so the Chamber can also take into account, as a background, events prior to that date.

38. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the case of *Blentić v. Republika Srpska* (Case No. CH/96/17, decision of 3 December 1997, paragraphs 19-21, with further reference) the Chamber considered this admissibility criterion in light of the corresponding requirement in Article 26 of the Convention to exhaust domestic remedies. The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that 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 of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

39. In the present case the Federation objects to its admissibility notably on the ground that the domestic remedy provided by the new Law has not yet been exhausted. It is not for the Chamber to examine the new Law in general, in isolation from the manner in which it is being applied by the competent authorities. Accordingly, whilst the new Law has afforded a remedy which might in principle qualify as an effective one within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to his apartment, the Chamber must ascertain whether in the case now before it this remedy can also be considered effective in practice.

40. The Chamber recalls that in November 1996 the competent cantonal ministry declared the applicant's apartment permanently abandoned. Subsequently, the public enterprise "Unis Pretis" permanently allocated it to its then temporary occupant I.T. On 28 July 1998 the competent cantonal authority confirmed the applicant's occupancy right for the purposes of the new Law and entitled him to reclaim his apartment. It was nevertheless established that I.T. had contracted to use the apartment and had moved in before 7 February 1998. The case was therefore referred for a further decision under Article 3(6) of the new Law with a view to allocating another apartment either to I.T. or the applicant. To date no such decision appears to have been made in spite of the strict 30-day time limits stipulated in Article 3(6). The Chamber notes that, had those time-limits been respected, a final decision in the applicant's case would have been made well before the decision of the High Representative of 5 November 1998 to suspend the application of Article 3(6) of the new Law. Furthermore, this decision of the High Representative can in no way be interpreted as permitting the responsible authorities to delay the proceedings further.

41. In these particular circumstances the Chamber is satisfied that the applicant could not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy provided by domestic law.

42. As no other ground for declaring the case inadmissible has been established, the Chamber declares the application admissible.

B. Merits

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

1. Article 8 of the Convention

44. Article 8 of the Convention reads, as far as relevant, as follows:

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

45. The applicant did not mention Article 8 expressly in his complaint. However, following its decision in *Kevešević* (decision of 10 September 1998, paragraphs 36-58) the Chamber will nevertheless examine the case under this provision.

46. It is the Federation's assertion that it was necessary in the public interest to declare the apartment abandoned and to allocate it temporarily to another person, whose dwelling had been badly damaged during the war.

47. The Chamber notes at the outset that during the hostilities the applicant was forced to leave his apartment for medical reasons. After the end of the war he was allegedly still unable to return to the apartment which was eventually declared permanently abandoned and allocated to I.T.

48. 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, *inter alia*, the aforementioned decision in *Kevešević,* paragraphs 39-42; European Court of Human Rights, *Gillow v. United Kingdom*, judgment of 24 November 1986, Series A No. 109, paragraph 46; *Buckley v. United Kingdom*, judgment of 25 September 1996, Reports 1996-IV, fasc. 16, paragraph 54). The Chamber furthermore considers that there has been an ongoing interference with the applicant's right to respect for his home.

49. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (cf. the aforementioned *Gillow* judgment loc.cit., paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

50. The Chamber has already found that the provisions of the Law on Abandoned Property (i.e. the old Law), as applied also in the present case, failed to meet the standards of "law" as this expression is to be understood for the purposes of Article 8 of the Convention (see the *Kevešević* decision, paragraphs 50-58). In the present case the Chamber sees no reason to differ. Accordingly, this provision was violated already by virtue of the decision of November 1996 to declare the applicant's apartment permanently abandoned.

51. The present case also relates to the application of the new Law. The Chamber has already noted (in paragraph 40 above) that the applicant's claim for repossession has not been finally examined in compliance with the time-limits stipulated in Article 3(6) of the new Law. In addition to the violation stemming from the decision to declare the applicant's apartment permanently abandoned there is thus an ongoing violation of his right to respect for his home within the meaning of Article 8 paragraph 1, in so far as the procedure for examining his repossession claim has not been "in accordance with the law" either. On this point the Chamber would add that under Article 3(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 reclaim his apartment.

52. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given both the declaration of permanent abandonment and the failure to decide in time and finally, pursuant to Article 3(6) of the new Law, on the applicant's claim for repossession, this failure having prevented him from returning to his apartment.

2. Article 6 of the Convention

53. The applicant also complains that his right to efficient legal protection has been violated.

54. The Chamber has already found that a dispute relating to the existence of an occupancy right comes within the ambit of Article 6 paragraph 1 of the Convention (see, e.g., the above-mentioned *Kevesević* decision, paragraph 63). This provision provides as follows:

> "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..."

55. However, given its finding in respect of Article 8 of the Convention, the Chamber finds it unnecessary to examine the complaint under Article 6.

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

56. The applicant complains, in essence, that his right to the peaceful enjoyment of his possession has been and continues to be violated as a result of the decision declaring his apartment abandoned, the allocation to I.T. of a permanent right to use the apartment and the effective prevention of the applicant's return into this dwelling. The Chamber will examine this complaint under Article 1 of Protocol No. 1 to the Convention which 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 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."

57. The Federation argues that Article 1 of Protocol No. 1 is inapplicable. In any case, there has been no violation of this provision, as the temporary allocation of the applicant's apartment to I.T. was necessary in the public interest so as to solve an urgent housing problem.

58. The Chamber has already found that an occupancy right can indeed be regarded as a "possession", it being a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy an apartment indefinitely (see *M.J. v. The Republika Srpska*, No. CH/96/28, decision of 7 November 1997, paragraph 32 and the aforementioned *Keveŝević* decision, paragraph 73).

59. The Chamber has further found that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Law, amounted to a *de facto* expropriation which was not subject to conditions provided for by law and thereby in violation of Article 1 of Protocol No. 1 (see the above-mentioned *Kevesević* decision, loc.cit., paragraph 80). The Chamber finds no reason to differ in the present case. Accordingly, this provision was violated already by virtue of the decision of November 1996 to declare the applicant's apartment permanently abandoned.

60. The applicant's grievance under this provision extends to the failure of the authorities to decide finally on his claim for repossession. The Chamber has already noted (in paragraphs 40 and

51 above) that the applicant's claim for repossession has not been finally examined in compliance with the time-limits stipulated in Article 3(6) of the new Law. In addition to the violation stemming from the decision to declare the applicant's apartment permanently abandoned there has thus been a continuing violation of the applicant's right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 in so far as the procedure for examining his repossession claim has not been "subject to the conditions provided for by law" either.

61. Accordingly, the Chamber concludes that Article 1 of Protocol No. 1 has been violated, given both the declaration of permanent abandonment and the failure to decide in time and finally, pursuant to Article 3(6) of the new Law, on the applicant's claim for repossession, this failure having prevented him from returning to his apartment.

VII. REMEDIES

62. 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 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 injuries) as well as provisional measures.

63. The applicant has requested the Chamber to order that he be effectively reinstated into his apartment. He further requests that all his moveable possessions which were in the apartment at the time when I.T. moved into it be returned in the same condition.

64. The Chamber considers it appropriate to order the Federation to take all necessary steps to enable the applicant, whose occupancy right has already been confirmed under the new Law, to return swiftly to his apartment.

65. The Chamber has considered the applicant's further request as a claim for compensation. Leaving aside the question whether this claim is premature (given the uncertainty as to what possessions have remained in the applicant's apartment and in what condition they are), the Chamber recalls that where it has not been shown that the alleged loss of or damage to property was directly caused by the respondent Party or any person acting on its behalf, the respondent Party cannot be held responsible (see, e.g., *Blentić* and *Bejdić v. The Republika Srpska*, CH/96/17 and CH/96/27, decisions of 22 July 1998, paragraphs 10 and 11, respectively; to be published in *Decisons and Reports 1998*). In the present case no such responsibility can be established. This claim must therefore be rejected. The Chamber would add that, if the applicant deems this necessary after having established the existence and state of his moveable possessions in connection with his effective reinstatement into his apartment, he has the opportunity to initiate proceedings for damages against I.T.

VIII. CONCLUSIONS

66. For the above reasons, the Chamber decides:

1. unanimously, that, in so far as the applicant's apartment was declared permanently abandoned and he has been prevented from returning to this apartment due to the failure after the entry into force of the new Law to decide in time and finally on the substance of his claim for repossession there has been a violation by the Federation of his right to respect for his home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

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

3. unanimously, that, in so far as the applicant's apartment was declared permanently abandoned and he has been prevented from returning to this apartment due to the failure after the entry into force of the new Law to decide in time and finally on the substance of his claim for repossession, there has also been a violation by the Federation of his right to peaceful enjoyment of

his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement:

4. unanimously, to order the Federation to take all necessary steps to process the applicant's repossession claim in substance without further delay, with a view to its being granted and the decision swiftly enforced;

5. unanimously, to reject the applicant's claim for compensation; and

6. unanimously, to order the Federation to report to it by 15 March 1999 on the steps taken by it to comply with the above order.

(signed)	(signed)
Leif BERG	Michèle PICARD
Registrar of the Chamber	President of the Chamber

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains a separate concurring opinion of MM. Vlatko Markotić, Vitomir Popović and Želimir Juka.

CONCURRING OPINION OF MM. VLATKO MARKOTIĆ, VITOMIR POPOVIĆ AND ŽELIMIR JUKA

I. The applicant acquired his occupancy right under the Law on Housing Relations (Official Gazette SRBiH No. 14/84, 12/87, 36/89). This was a law of the former Republic of BiH which was a constituent part of the state of SFRJ. This Law was adopted by the Federation of Bosnia and Herzegovina (which derived from the former SFR Yugoslavia) by the Law on Adoption of the Law on Housing Relations (Official Gazette of the Federation of BiH No. 11/98 dated 3 April 1998) which was in force on the date of the adoption of the present decision by the Chamber. This Law on Housing Relations, in Article 44, specifically provided for cases where the occupancy right is to be terminated as follows:

The holder of the allocation right or a housing community may cancel a contract to use an apartment for any occupancy right holder as follows:

1) where the occupancy right holder, other occupants of the apartment and any other tenants use the respective apartment for any purpose contrary to the contract or in a way inflicting damage to the apartment, common premises or fixtures by their fault;

2) where the occupancy right holder, other occupants of the apartment or any other tenants use the apartment in a way disturbing occupants of other apartments in the same building in peaceful enjoyment of their possession;

3) where the holder of the occupancy right fails to pay the rent and other due contributions under Article 38, paras. 1 and 2, except for a reason stated in Article 35, para. 6, of this Law, more than three months, unless otherwise determined;

4) where the holder of the occupancy right, contrary to the municipal regulation, uses or rents the apartment for business purposes (Article 37);

5) where the apartment, in accordance with a regulation of the municipal assembly, is to be transformed into business premises (Article 37);

6) where the occupancy right holder is renting a part of the apartment or the whole apartment to subtenants contrary to the provisions of this law, thus to the regulation of the municipal assembly (Article 54);

7) where a fictitious exchange of apartments has been made.

The respondent Party did not even try to prove that the applicant had lost his occupancy right in a lawful way. An occupancy right may not be terminated if a person goes to a hospital to receive medical treatment.

The Law on Abandoned Apartments (Official Gazette RBiH Nos. 6/92, 8/92, 16/92, 13/94, 9/95 and 3/95) was issued in BiH during the war, and since 50% of its population left Bosnia and Herzegovina due to the war and a considerable number of apartments remained abandoned, the authorities allocated such apartments for temporary or permanent use to refugees and displaced persons within the territory of BiH. Considering that the applicant is neither a refugee nor a displaced person, his apartment could not have been allocated to a refugee.

After the cessation of the war in BiH, on 3 April 1998 the Federation of BiH issued a Law on Cessation of the Application of the Law on Abandoned Apartments and enabled refugees and displaced persons TO REGAIN AN OCCUPANCY RIGHT subject to certain conditions and if they claim this right within six months of the entry into force of this law. The applicant is neither a refugee nor a displaced person who would be required to reacquire his occupancy right.

II. Upon his return from the hospital on 21 June 1996 the applicant found his apartment occupied and he submitted a claim to the authorities to be reinstated into it. It has still not been granted after almost three years, which is evident from the facts as established by this Chamber.

III. On the basis of the above-stated, a conclusion may be drawn that the above quoted war and post-war legislation may not be applied to the applicant's right to reinstatement, because he has never lost the right to the apartment in a lawful way, and these laws are very unfavourable to the applicant on very essential points.

(signed) Mr. Vlatko Markotić

(signed) Vitomir Popović

(signed) Želimir Juka